

22

THE  
TRYAL  
O F  
*MARY HEATH,*  
Upon an Indictment for  
PERJURY,  
BEFORE THE  
Lord Chief Justice  
*M A R L E Y,*

And the Justices of the Court

O F

*KING's BENCH*  
I N  
I R E L A N D,

On Friday, the Eighth of February, 1744.

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*L O N D O N:*

Printed for C. CORBETT, at *Addison's Head*,  
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# MOTIONS

In Behalf of the Crown for putting the  
Tryal off 'till next Term.

*Monday, February 4, 1744.*

**The Court being sat.**

*Mr Sollicitor General for the Crown.*



Party has.

*Lord Chief Justice.* The Sheriff could not give it without leave of the Court.

*Mr Sollicitor General.* The Court is seldom or never applied to on that Account, the She-

riff usually gives Copies of the Pannel to the Parties, without any Application to the Court, two or three Days before the Trial ; but supposing an Application to the Court necessary, why should he give it to one Party, and refuse it to the other.

*Mr Spring for the Traverser.* The Gentlemen concerned for the Prosecution have serv'd us with Notice of a Motion to put off the Trial, and therefore we hope they will make their Motion.

*Mr Sollicitor General.* We desire first to see if there be a Jury ; we have a right also to know if the Jury have been rightly summoned.

*The Bailiffs being called to prove the Summoning the Gentlemen mentioned in the Pannel, they appeared, were sworn, and the Pannel was called over.*

*Mr Sollicitor General.* I observe my Lord that several of the Gentlemen mentioned in this Pannel are out of the Kingdom, and well known by all of us to be out of the Kingdom, several others live in distant Counties, out of the County of Dublin ; some are old and infirm, and uncapable of serving on Juries for several Years past ; others have been dead several Years ; and some are six Clerks in Chancery, and Officers in the Customhouse, who neither can or are obliged to attend.

*Lord Chief Justice.* All Persons summoned ought to appear, and then shew Cause why they should be exempted from serving.

*The Jury being called over twice, eight of their Number only appeared.*

*Mr Sollicitor General.* My Lord I see only eight Gentlemen of the Jury attend, and if eight more of these in the Pannel had been in the Kingdom they would not have attended. Members of Parliament are exempted, and so are Officers in the Court of Chancery, and Custom-house. Others are disabled from attending by Absence, the Infirmities of old Age, and Death; so that if both Sides were prepared, as there is no Jury, there can be no Trial this Day; therefore we are under no Necessity of making our Motion for putting it off.

*Court.* We had some Thoughts of bringing on the Trial next *Wednesday*, but there is a Sitting of *Nisi prius* that Day, and other Suitors are not to be injured. Let the Trial therefore be put off 'till *Thursday*, but the Attorneys should consent. *Mrs Heath*, do you consent it should be put off?

*Mary Heath.* Yes, my Lord.

*The Agent for the Prosecutors was asked whether he would consent to bring it on a Thursday, but he said he would not come into any such Consent, nor had he any Authority so to do.*

*Lord Chief Justice.* The Reasons given to Day for putting off the Trial, will not be sufficient next *Thursday*, for putting it off any further; if the Expences attending the Trial are to be sav'd, the sooner the Trial comes on the better.

*Mr Sollicitor General.* We intended to have Tried this Question to Day, but *Mr Macker-*  
*ther*

*cher*, who conducts this Affair, and is the only Person that throughly knows the Evidence proper to be produc'd to prove the Indictment, is on the other side of the Water, detain'd by contrary Winds, and so likewise are some of our most material Witnesses who are daily expected: There are seven Packets due, if Mr *Mackercher* and our Witnesses come, we will immediately go to Trial, if not, we cannot.

*Mr Bradstreet for the Traverser.* I hope my Lord, that both Parties shall be confin'd to particular Hours; and that each party should examine an equal number of Hours by turns.

*Mr Harward for the Crown.* I am certain, my Lord, such a Rule never was made in Trials of this kind.

*Mr Justice Ward,* I hope I shall take care that the Jurors and my self shall not be in danger of being destroy'd.

*Lord Chief Justice.* Examining by Hours is not so unprecedented, it was the old Custom among the *Romans*,

# Thursday Morning Febru- ary 7th.

The Court being sat.

*Mr Sollicitor General for the Crown.*

MY Lord, I mentioned to your Lordship last *Monday*, that Mr *Mackercher* and several of our most material Witnesses were on the other side of the Water waiting for a Passage; if they had arriv'd, we should willingly have tried this Traverse to Day, but it has so happen'd contrary to our expectation that they are not yet arriv'd, and therefore as we are not yet furnished with our material Evidences, or with any Person acquainted with the Evidence proper to be applied to prove the Facts in the Indictment, we can't with safety go to Trial. Colonel *Weldon*, my Lord, who is known to be a Gentleman of great Worth and Reputation, has been serv'd with a Subpæna, but is extremely ill of the *Gout* in his Bed, and tho' a very material Witness and willing to give his Evidence, he is not able to travel to Town without endangering his Life, and the Prosecutors without the Benefit of his Testimony cannot properly proceed to Trial. I therefore only move your Lordship that this Trial may be put off 'till the first Day of next Term.

The

*Mr Serjeant Marshal for the Crown.*  
 The Traverser, my Lord, remov'd this Indictment in *October* last by *Certiorari* from the Commission of *Oyer* and *Tirminer* into this Court on the very Day it was to have been tried, after she had put the Gentlemen for the Prosecution to all the Expence of a Trial, for want of giving them previous notice of her Intentions to put it off. And on the 7th of *November* when she appeared on her Traverse in this Court, on her bare Allegation that she was not prepar'd to take her Trial, she was farther indulg'd, and had 'till the 14th given her, to prepare herself for it, tho' the Gentlemen were then also ready for Trial.

On the 13th the day immediately proceeding this last Day appointed by the Court for her Trial, the Counsel for the Traverser again moved to put off her Trial on her single Affidavit, that she had some material Witnesses in *England*, and in remote Places of this Kingdom, and upon that Foundation alone her Trial was put off 'till this Term. We, my Lord, have given regular and timely Notice to the Agent for the Traverser, that we would apply to your Lordship to put off the Trial. Affidavits we have to shew that we are not prepared to come to Trial, and therefore we hope we shall have the like Indulgence with the Traverser to put it off 'till next Term, especially as this is the first application of that kind we have made, and as we have formerly been put to so great Inconveniences and Charges by the Traverser's affected Delays.

If your Lordship pleases that Mr *Mackercher*'s Affidavit sworn the 13th of November last, which was read upon the Traverser's Motion to put off her Trial last Term, may be now read.

*Court.* Let Mr *Mackercher*'s Affidavit be read.

The Purport whereof was that the Deponent had sent to *England* and several Counties in this Kingdom for Witnesses against *Mary Heath* in Expectation that she wou'd be try'd on the Commission of *Oyer and Terminer* held for the County of *Dublin* on the twenty fourth of *October* last. That a great many of such Witnesses came to the City of *Dublin* from *England* and several remote parts of this Kingdom, in order to be examined in behalf of his Majesty on the said Tryal, but her Indictment having without any previous Notice been removed by *Certiorari* to the Court of *King's Bench*, and she being bound to prosecute her Traverser this Term, this Deponent sent many of the said Witnesses (who live in this Kingdom) out of Town, and others of them who are old and infirm and live in remote Parts, and also the Witnesses who came from *England* Deponent kept at a considerable Expence in Town several Weeks.

That the said Tryal being appointed to come on the fourteenth of this Month, Deponent therefore sent to several Counties in this Kingdom, for many of the said Witnesses that were before in *Dublin* to give Evidence against the said *Heath*.

That some Witnesses material to be examined against the said *Heath*, have a Call to *England* upon Busines of very great Importance, and other material Evidences against the said *Heath*, on her Tryal, are very old and infirm, so that if her Tryal shou'd be put off 'till the next Term, it will put the Prosecutors to very considerable Expence and Hardships, and be highly inconvenient to and almost imposible, for several other Witnesses (who are obliged, as soon as they can, to go to *England*) to attend in this Kingdom, in the next *Hillary* Term, without neglecting Affairs of the greatest Consequence. And besides several other material Witnesses, who are old and infirm, may dye and become so weak and infirm as not to be able to attend the next Term, so that the Deponent believes the said *Mary Heath*'s Application to put off her Tryal is intended to put the Prosecutors to great Expence, and to avoid or postpone as much as she can, her being try'd. And if said *Heath*'s Tryal shou'd be put off 'till next Term, she will not nor can she be so effectually prosecuted as she now wou'd be, in regard that several very material Witnesses against her will be under a necessity of being in *England* the next Term, and for want of such Evidence said *Mary Heath* may be acquitted, whereas if they attended she wou'd be found guilty of Perjury as Deponent believes; and Deponent is credibly informed and verily believes that said *Mary Heath* from the Assurance given her of her Tryal being put off, has not taken out

out one Supæna or taken any Steps to prepare for the same, tho' she has had sufficient time.

*Mr Marball.* I pray my Lord that Mr Nelson's Affidavit may be read.

*Court.* Read his Affidavit.

Richard Nelson's *Affidavit, Sworn 2d February*

1744

The Purport whereof is; That the Deponent being employed as Agent for the Prosecutors, prepared a Brief for Council and sent several Supænas for Witnesses to several Parts of this Kingdom to give Evidence in behalf of his Majesty against *Mary Heath* on her Tryal, which was appointed as Deponent believes on the fourth of *February* Instant.

That Deponent lately received a Letter from *Daniel Mackercher* Esq; dated at *London* the 10th of *January* last, and believes that he left *London* on or about the 17th of *January* last in order to come into this Kingdom to carry on the Prosecution against said *Mary Heath*, he being one of the principal Persons carrying on the same, and believes the said *Mr Mackercher* is and has been at *Park-Gate* or *Holy-Head*, and Deponent expects him in this Kingdom as soon as the Wind becomes fair for a Passage; and believes *William Goustry* of *London* Gentleman, is a material Witness to be produced against said *Heath* upon her Tryal, and believes the said *Goustry* and others who are Witnesses to be likewise produced against her, on her Tryal, are waiting on said *Mr Mackercher* at *Park-Gate* or *Holy-Head* for a Passage

Passage and that an effectual Prosecution cannot be carried on against her untill said Mr Mackercher comes into this Kingdom.

Mr Marsh ll. I pray my Lord that the Affidavit of *Robert Kennedy* may be likewise read, which will inform your Lordship of Col. *Weldon's* State of Health.

Court. Read his Affidavit.

Robert Kennedy's *Affidavit*, sworn 6th of February, 1744.

Deposeth that on the 27th of January last he personally served *Arthur Weldon*, Esq; at his House at *Rakeen* in the King's County, with a Subpæna, — whereby he was required on the fourth Day of February, to appear in this Court to testify against *Mary Heath*, and that Mr *Weldon* then told Deponent, he wou'd willingly attend but that he was so ill of the *Gout*, that he cou'd not stand or scarce stirr, and that he wou'd not venture his Life, and that the Week before he had the *Gout* in his Stomach, and that Mr *Weldon* appeared to Deponent to be very weak and ill, and that he was not, as Deponent believes, able to walk one step, nor able to travel in a Coach or Carriage to *Dublin*, without great hazard of his Life; and believes that he is not nor has been since able, without great danger of his Life, to travel in a Coach or otherwise to *Dublin*; and believes he is a very material Witness against *Mary Heath*, and that she cannot be effectually prosecuted without his Testimony,

Testimony; and believes he would readily attend to give Evidence on her Trial, if he cou'd do it without endangering his Life; and believes he will attend to give his Evidence in behalf of his Majesty in case her Trial be put off 'till the next Term, and that Mr *Weldon* be then able to travel with safety to his Life.

*Mr Tisdal.* My Lord, it is the Interest of Society to bring Offenders to Justice: The Gentlemen who conduct this Prosecution were fully prepared for a Trial before this Affair was removed by *Certiorari*, and since it was removed into this Court there was a Day appointed for Trial last Term; the Witnesses came to Town from several Parts, at great Expences, and in regard the Traverser was not then ready, the Trial was put off, which put the Prosecutors to great hardships in preparing at different Times for the expected Trial. The Affidavits which have been read have mentioned that some of our Witnesses are at the other Side of the Water, and that Col. *Weldon* has been served with a Subpæna, and would attend if possible. And for these Reasons we hope your Lordships will put off the Trial 'till next Term.

*Court.* Was Mr *Weldon* bound over?

*Mr Nelson.* No.

*Mr Daly for the Traverser.* I would humbly inform your Lordships that when the Prosecutors applied to carry on this Trial last Term, there was no Pretence then offered, that Col. *Weldon* was a material Witness for them. I pray that *Mary Heath's* Affidavit may

may be read. Which was accordingly read ; and the Purport thereof was, that she had several material Witnesses in several Parts of this Kingdom, and some in *England*, and that she cou'd not with safety go to Trial without the Benefit of their Testimony.

Mr *Recorder* mentions in behalf of the *Traverser*, that the Bill was found in *October* by the Commission of *Oyer and Terminer* ; and that the reason of moving the Indictment by *Certiorari* was, that it was impossible for the *Traverser*, in so short a Warning, to prepare for her Trial ; and it so happening, that *Michaelmas* Term was so close on the Heels of finding the Indictment, she cou'd not, notwithstanding all her Efforts, collect all her Witnesses from the remote Parts of this Kingdom, and from *England*, to prepare for this Tryal. And therefore cou'd it be imagined that it was to delay Justice, when the *Traverser* was only endeavouring to have an Opportunity of Defence ? the Prosecutors then said they were ready ; and pray why not the same reason now of being prepared ? if they put themselves to unnecessary Expences last Term in preparing for Trial, the fault of that is to be imputed to themselves, *They had Notice given them that Application would be made to postpone the Trial.*

*Council for the Crown.* It clearly appeared to the Court last Term, that the *Traverser* had not made the least Effort, or taken one Step to prepare for her Trial ; and that we had

had very short Notice of her Intentions, and that only after they knew all our Witnesses were sent for and come to Town.

*Council for the Traverser.* The Traverser is at great Expences; her Witnesses being now in *Dublin*; and the reason that was offered last Term for putting off the Trial, can't subsist now, because both Parties have had sufficient time to make the necessary Preparations for Trial. Pray my Lord, what foundation have they now to put off this Trial?

As to Mr *Mackercher*'s Affidavit wherein he says that Mrs *Weedon* is a material Witness for the Prosecutor; he never saw her, yet he ventures to say this; she is there to be examined, and will clear up that matter, and obviate the Objection.

*Council for the Crown.* Mr *Mackercher* was informed of it by her Sons, and by many others to whom she had declar'd herself to on that head.

*C. for Tr.* The next thing to be consider'd, my Lord, is the Affidavit of *Robert Kennedy*, who swears that Mr *Welldon* is a material Witness, without giving any Account that he knows him to be so; this Person who is only a sever of Subpænas, ventures from his own Knowledge to know what is or what is not material. If the Agent in the Cause wou'd swear it, there might be some Reliance on it; if this Trial is put off, my Lord, another Witness may be found next Term, which might be thought as equally material; so that this Gentlewoman before

before she can have an Opportunity of justifying herself, may die in the mean Time, under the Imputation of the Indictment.

If the Affidavit of any Physician who attended Mr *Weldon*, would certify his Illness and his Inability to come to Town, it would be more proper than the Assertion of the severer of Subpænas: Besides my Lord, a Man in the *Gout*, tho' he can't walk, might be able to Travel, but how a Person who is neither Attorney or Agent in the Cause, and who is not to be presumed to be in the Secrets of the Prosecutor, can swear Mr *Weldon* a material Witness, is somewhat very extraordinary; besides my Lord, since the Time of service of the Subpænas, which was the 27th of *January*, he may so recover as to be able to come to Town, tho' indisposed then. But why was not this Gentleman thought of last Term, when the Prosecutors said they were ready. Therefore considering the Circumstances of this Case, I hope your Lordships will not put off the Trial.

Mr *Solicitor General*. My Lord, it appears that the Bill of Indictment was found against this Woman the 24th of *October*, yet application was made on the 13th of *November* last to put off her Trial; she had that Interval of three Weeks time to prepare, but because she swore she had some material Witnesses, who were wanting on her Tryal, it was put off. I hope my Lord, the Reasons which we offer will have the same weight, 'till we can be properly prepared. Mr *Mackercher* who is

one of the principal Managers of this Prosecution, and without whose Presence it cannot be carried on effectually, is detained on the other Side of the Water by contrary Winds, and if this Cause should be put off 'till the next Term, he will be here then ; so that I hope we shall have the same indulgence that the Traverser had, and that this Trial may be put off 'till the next Term.

*L C. J.* In the Affidavit of *Robert Kennedy*, there is no Addition to his Name, which is not very common in Affidavits.

*Mr Sollicitor General.* The Identical Person is in Court to be produced if required.

*Robert Kennedy was call'd and sworn*

He was asked by the Court, how he knew that Col. *Weldon* was a material Witness.

He said that Col. *Weldon* was sworn before a Master in *Chancery*, at the last Assizes of *Maryborough*, and that he was present, and that he was employed by *Mr Annesly* to bring his Affidavit along with some other Affidavits to *England*, to lay before the Attorney General, and that he was to attest his being present when they were swore.

He was asked in what cause that Affidavit was made.

He said that it was in the cause of *Mr James Annesly*, against the Right Hon. *Richard Earl of Anglesey*.

He was asked if he was a Judge what was or what was not material Evidence in a Trial of Perjury.

He said the reason he knew what Col. *Weldon*

*don* had to say was material, was from Mr *Weldon's* Affidavit.

It was hereon remarked that Mr *We'don's* Affidavit was in a different cause.

He was asked what was his Occupation in Life.

He said he kept a Beer House, he Imported a great quantity of Beer from *London* in a Year, and sold a great deal by Wholesale

*Lord Chief Justice.* He is not a proper person to distinguish material Evidence, and remarked that no Affidavit was made 'till yesterday that Mr *Weldon* was a material Witness.

*Mr Tisdall.* The Public is concern'd in this Prosecution ; Trials are put off frequently in behalf of the Crown, on Affidavits of Witnesses not being able to attend : We hope the Crown and the Publick is at least entitled to the same Indulgence as was given last Term to the *Traverser* on her Application to the Court ; why should she, my Lord, who by affected delays put off her Trial so often before, be suffer'd to take advantage of our Weakness at present ?

*Mr Daly.* I would observe to your Lordships, that Mr *Levingston* on the 11th of November last, swore an Affidavit before a Master in Chancery, in the Suit of Mr *Annesley* against Lord *Anglesey*, that Colonel *Weldon* was in so bad a State of Health, that it was feared the Plaintiff would lose the Benefit of his Testimony, unless he was examined *de bene esse*, yet

yet on the 13th, two Days after, Affidavits were swore for the Prosecutor in order to come to Tryal. My Lord we have the Copy of Mr *Levingston's* Affidavit, which we beg leave may be read.

Mr *Harwood* objects the reading of Mr *Levingston's* Affidavit, which was made in the Court of *Chancery*, and says it is not an Affidavit in the Cause of his Majesty against *Mary Heath*; therefore he hopes it wont be admitted to be read. Besides this is only a Copy of an Affidavit.

*Lord Chief Justice.* Pray in the *Exchequer* Chamber would not the Copy of a Record be admitted to be read.

*Mr Daly.* Suppose an Affidavit charging Perjury, was made in the Court of *Chancery*, could it not be laid before the Grand-Jury?

*Court.* Gentlemen for the Prosecutor, shew Precedents why a Copy of Mr *Levingston's* Affidavit should not be read.

Mr *Harwood* mentioned the Case of *Edworth* against *Edgeworth* against reading the Affidavit: And moreover, my Lord, tho' Col. *Weldon* was in such a State of Health, as made it prudent to examine him to preserve his Testimony; yet he might have been well enough to attend the Trial last Term.

*L. C. J.* Are not Affidavits in the Spiritual Court read here on Prohibitions. There are no Precedents shewn why the Copy of Mr *Levingston's* Affidavit should not be read.

*Arthur McGuire* sworn to prove he compared the Copy which he had in his Hand

with Mr *Levingston's* Affidavit on Record, and that it was a true Copy thereof.

*The Copy of Mr Levington's Affidavit read.*

Mr Walsh. My Lord if there was no other Foundation to put off this Trial but the Affidavit that has been made of Mr *Weldon's* being a material Witness, I humbly apprehend, it would be a sufficient Reason. The Person who made the Affidavit was examined before your Lordships. He has mentioned why he was a material Witness; and tho' he is not a Person of great Distinction, as Mr *Recorder* would have him, he is a very creditable honest Man, and has a Right to be believed on his Oath, as well as any other Man.

My Lord there are several other Witnesses who are very material to attend on this Trial, who can't possibly attend if it comes on now, and not proper to disclose who they are, or whether they are or are not material, it is sufficient that they are sworn to be material. We were ready to come to Tryal last Term, and tho' we should not then have had the Attendance of Mr *Weldon* there, we might have other Witnesses to prove the Point for which we now want his Evidence. Those Witnesses we have not at present, therefore considering the Disabilities we are under at this Time, hope we shall be indulged for once as well as the Traverser was.

L. C. Justice Marley. Gentlemen, did you ever know of a Trial under these Circumstances to be put off without paying Cost.

*Council for the Prosecutors.* There was the same and stronger Reason last Term for the Traverser's paying Cost, and yet it was denied us.

*Mr Harwood.* My Lord, this Bill of Indictment comes here as well supported as any Indictment that was ever brought into this Court. I say it is supported by a Verdict found by twelve Gentlemen of as great Repute and Character as ever were upon any Jury, who had it for fifteen Days under their Consideration. There is no Imputation my Lord of it's being an idle or wanton Prosecution. This Indictment was removed by *Certiorari*. It is no Writ of Right that the Subject has, but in reality it is an Indulgence to the Subject. The repeated Indulgence given to the Traverser in not bringing on her Trial last Term, has been mentioned already, and as this Prosecution is in behalf of the Crown, we hope an equal Hand will be carried between his Majesty and the Subject. *Mr Mackercher* has sworn in his Affidavit, that some material Witnesses to be examined in this Cause had necessary Calls to *England*; and that if the Traverser's Trial should be put off to this Term, that it would be almost impossible for them to attend, nay it was plainly told the Court they could not attend: We find he is not here, and other material Witnesses are at the other Side, waiting for Wind; which I say adds more Credit to *Mr Mackercher's* former Affidavit, for it is fallen out as he said, that if the Trial was post-

postponed that it was next to an Impossibility that they could attend.

Mr *Nelson* has mentioned a Letter he received from Mr *Mackercher*, that he expected him with the first fair Wind. *Kennedy* has mentioned in his Affidavit the ill State of Health of Colonel *Weldon*, and that he was a material Witness.

As to the Objections that *Kennedy* was not Agent, and therefore cannot know whether he was a material Evidence, I humbly rely on it my Lord, that it can have no manner of Weight, for *Kennedy* has told your Lordships, that he was present when Mr *Weldon* swore his Affidavit, and had the Custody of it, and therefore must know the purport thereof, and how far his Testimony might be relative to this Tryal. I beg leave to say that the single Testimony of Mr *Weldon* as he is a Gentleman of an unexceptionable Character might be put in the Scale against many Witnesses, not so well established in Point of Reputation, and the want of his Evidence is a sufficient Motive to postpone the Tryal.

I must further observe to your Lordships, that last *Monday* there appeared in the Box only eight of the Jury mentioned in the Panel; so that if both Parties were prepared, the Tryal cou'd not have come on that Day; and as this Day's Application is the first and only one, on our part for putting off the Tryal till next Term, I hope your Lordships will indulge us in it.

Mr

Mr Robbins mentioned, that the same Cause of putting off the Tryal last *Monday* still subsists, and urged very strongly some of the Reasons offered by the other Council for putting off the Tryal.

Mr M<sup>r</sup> Manus. My Lord it fully appears from the several Proceedings the affected delays, given by the Traverser to post-pone her Tryal to this Term.

The Bill of Indictment, (as has been already observed) was found in *October* last and the Traverser to post-pone her being tryed at the then Commission of Oyer and Terminer, brought a *Certiorari*, so that I beseech your Lordships to consider that the Indictment comes into this Court at the prayer of the Traverser. The Court were bound of right to avoid it at the instance of the King; because every Indictment being at the Suit of the Crown, he has a Perogative of suing in what Court he pleases; but at the request of the Defendant a *Certiorari* is seldom grantable for the removal of an Indictment before the Justices of Goal Delivery, and very rarely if ever for removing an Indictment for Perjury, Forgery, and other heinous Misdemeanours; where the Publick is so nearly interrested; in regard such Crimes deserve all possible Discoultance; and the *Certiorari* might delay, if not wholly discoultance the Prosecution, and so delivered in *1st Syder 54.*

It is likewise delivered as Law, if a Cause be moved out of an inferiour Court, it ought to be Tried the same Term that it is remov-  
ed

ed, that the Party may not be delay'd by *Certiorari*. My Lord, after it was removed and the Traverſer appeared on her Traverſe, in this Honourable Court, the 7th of *November*, she had Time given her 'till the 14th; when the 14th Came, she again moved to put it further off 'till this Term.

The Prosecutors very justly opposed the Motion last Term of delaying this Trial any further, 'till this Term, in regard they were at great Expences, and had several times prepared for it, yet on the Affidavit of Mrs *Heath*, that she had not some of her material Witnesses, it was postponed; so that I say my Lord this Trial was put off, at her Instance, at a Time when by Law, she should and ought to have been tried, and those Gentlemen had a right to demand a Trial.

There has been Affidavits read to your Lordships how material Mr *Weldon*'s Evidence is, and that he cannot now attend, but that the next Term it is hoped he will be able to give his Attendance, which is a strong motive to put off this Trial in behalf of the Crown. I beg leave, my Lord, to say that this is not in the nature of an Information. The Promoters of an Information may be guilty of a Default, but no Latches or Default can be imputed to his Majesty.

My Lord, it is equally odious to punish the Innocent, as to let the Guilty go free: your Lordship put off the Trial last Term least the Innocent should be punished upon a Presumption of Innocence till the contrary appeared, and I am sure my Lord you will be

be equally careful this Day not to let the Guilty go free, which may be the Case if the Prosecution be now hurry'd on, in the absence of several material Witnesses, who by Sickness and other Accidents are now prevented attending at this Trial, and in the absence of the Person who conducts it. From these Circumstances I hope your Lordship will put this Trial off 'till next Term.

*Mr Callaghan.* In all Cases my Lord, where any Indulgence is to be shewn, it is granted to the Crown ; yet I don't say but publick Justice should be properly and equally Administred : the Accusation founded on this Indictment carrys a great Decree of Presumption, tho' not Conviction ; the objection of *Kennedy*'s not knowing whether *Mr Weldon* is a material Witness or not, with great submission, can have no force ; other Persons may sometimes know who are material Witnesses as well as Men of Busines. If a Person stands unimpeached in his Character, there can be no objection to his Testimony. It is every Days Experience to put off Trials, if it appears that a material Witness is Visited with a Disorder, and can't attend ; in the present Case it appears several are absent.

As to what is offered on the other side, that this may be a Foundation for finding out other material Witnesses that cannot be present next Term ; that my Lord will have no great weight, forby the same Reason no Trial cou'd ever be put off for want of material Evidence ; moreover, my Lord, if the Trial be put off 'till

next Term, and the Traverser should then happen to be acquitted, it will be so much the more to her Honour, but if she Escapes for want of due, proper, or effectual Prosecution, she will not stand as unimpeached from publick Censure as otherwise she wou'd.

It has been already mentioned what Ex- pences we have been put to last Term, which might have been saved if we had known in time that her Trial was to be delayed, but care was taken that it should not be known, 'till the Prosecutors had been put to as great Charges as if the Trial had come on: And as great Mischiefs must arise if this Trial shou'd not be Postpon'd; I hope my Lord, it will not be brought on 'till next Term.

*Mr Harding.* All Questions are to be determined by the Importance of Evidence: I say my Lord in a Case of this kind, that on the weight of material Evidence all Questions must ultimately depend. If it appears that we have material Witnesses, who cannot attend at present, and if it so happen that we must lose the Benefit of their Testimony if this Trial comes on, this matter must still remain in the Dark; and if the Traverser should be acquitted for want of such important Evidence, she will in that respect stand under an Imputation. And I must beg leave to say, that I admire why Gentlemen from such Circumstances should be fond of trying this Traverse now, since the Prosecutors are not prepared; and that Mrs Heath's pressing on the Trial this Day, when she knows the Prosecutor

is

is not ready, is an Argument that she knows herself guilty. My Lord the Gentlemen of the other Side have laid great Stress upon the Objection that *Robert Kennedy* could not know that Col. *Weldon* was a material Witness. The Charge in the Indictment is, that Lady *Alltham* was not with *Child*, nor never had a *Child* at Dunmain. Surely my Lord he may know how far this Charge may be collected from the Affidavit of Mr *Weldon*, which he had seen, and had in his Custody, and which must be relative to this Matter; besides, my Lord, from the Conversation that *Kennedy* had with Mr *Weldon*, that he would willingly attend, but that he was so ill that he could not then venture his Life to travel; I say, with humble Submission, from this very Declaration he might know he was a material Witness. Pray, my Lord, if Mr *Weldon* was not a material Evidence, would not he have told *Kennedy* at that time that there was no occasion for his Testimony.

This is a Matter of very great Consequence, and if the Prosecution cannot be effectually carried on, the Traverser must be acquitted. The Public have a Right to a fair impartial Enquiry into this Affair; and as it can be of no Inconvenience to Mrs *Heath*, that this Trial should be postponed, but will be of the greatest Service to her if she be acquitted with Honour on an effectual Enquiry; but not so much to her Honour if she be now acquitted; therefore we hope her Trial will be postponed 'till next Term.

It was further observed by the Council for the Prosecution, that the Traverser had put her Trial off three several Times; that these affected Delays on her part, were by so much the greater Hardujip on the Gentlemen who carry on the Prosecution in behalf of the Crown, as they had not only postpon'd Busi-  
ness of the highest Consequence to them in *England*, in order to attend it; but as the Traverser's Intentions of moving for Delay has always been industriously concealed from them until the very Day that her Trial should have taken Plaee, or the Day immediately preceding it; by which means they were each of these three Times put to the same Trouble and Expence as if they had actually tried her with Effect. This Proceeding, my Lord, to all disinterested Persons, must appear not only vexatious, but calculated to promote the oppressive System of this unfortunate Gentle-  
man, Mr *Annesly*'s, too powerful Enemies, of worrying him and his Friends out by unne-  
cessary Expence and Delay. This Woman must have known her own Intentions of putting off her Trial to this Term, early enough to have given Notice of it to those Gentlemen, so as to have prevented the great Expence of Money and Time; and the great Trouble that they and their Witnesses have been at in preparing so often for her Trial; while she remained in a supine Security of having her Trial delayed, and relied on the Indulgence of this Court, without taking one Step to prepare for her it. We therefore hope, my Lord, that  
for

for these and many other Reasons already mentioned we shall this Day for once meet with the same Indulgence of putting off this Trial 'till next Term, especially as this is the first Application of that kind we have made,

The Court said, they did not think the and as we have so good a Right to expect it. Reasons urged by the Council for the Crown sufficient for putting off the Trial ; but as the Motion had taken up a great deal of Time (so that it would be impossible for them to go thro' it that Day) they were pleased to order that the Trial should come on the next Morning, and said they would be sitting by eight o'Clock.



( 12 )



THE  
TRYAL  
OF  
MARY HEATH,

Upon an Indictment for Perjury, before the  
Lord Chief Justice *Martey*, and the  
Justices of the Court of King's Bench in  
*Ireland*, on *Friday*, the Eighth of *Fe-  
bruary*, 1744.

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*Council for the Crown.*

Mr Sollicitor General.  
Mr Serjeant *Marshal*.  
Mr Serjeant *Tyndall*.  
Mr *Walb*.  
Mr *Robbins*.  
Mr *Harward*.  
Mr *Callaghan*.  
Mr *M'Manus*.  
Mr *Harding*.  
Mr *Morton*.  
Mr *Fitz-Gerald*.

*Council for the Traverser.*

Mr Recorder.  
Mr *Smith*.  
Mr *Daly*.  
Mr *Bradstreet*.  
Mr *Lee*.  
Mr *Lebunt*.  
Mr *Maddock*.  
Mr *E. Malone*.  
Mr *R. Malone*.  
Mr *Cooley*.  
Mr *Morgan*.  
Mr *Marley*.  
Mr *Hamilton*.  
Mr *Ford*.

*The Court being set, the Jury was sworn, and the following Persons appointed to try the Issue.*

Sir Samuel Cooke, Bart.	Mr Edward Ford.
John Rockford, Esq;	Mr Mark Sinnot.
Eyre Evans, Esq;	Mr Thomas Baker.
Mr Nicholas Arsdall.	Mr George Evans.
Mr David Chaneau.	Mr Narcissus Charles Proby.
Mr Quayle Somervell.	Mr Charles Burton.

*Clerk of the Crown reads the Indictment, which is as follows, to wit,*

County of  
Dublin,  
To wit, 

HE Jurors of our Lord  
the King upon their Oaths  
say and represent, &c.  
&c. And so the now  
Jurors sworn for our  
Lord the King as afore-

said upon their Oaths say, and represent, that the said  
Mary Heath, on the said Trial of the Issue aforesaid,  
upon her Oath aforesaid, before the Barons  
aforesaid, and Jurors of the said Jury, elected, tried,  
and sworn to try the said Issue between the Parties  
aforesaid, in the said Court of Exchequer in the  
King's Court aforesaid, in the County of Dublin  
aforesaid, in manner and form aforesaid, did falsely,  
voluntarily, knowingly, wilfully, maliciously, corrupt-  
ly, and illicitly commit wilful, voluntary, malicious  
and corrupt Perjury, in great Contempt of the said  
now King, and of his Laws, contrary to his Majesty's  
Peace, his Crown and Dignity.

Lord

*Lord Chief Justice.* I hope too many Witnesses will not be produced to take up the Time of the Court and the Jury ; they who will produce a Multiplicity of Witnesses, in order to spin out a Day, seem unwilling that a Trial should be had ; and therefore I hope neither Side will produce any Witnesses that are not necessary, as a Trial ought to be made an end of in one Day, and that the Gentlemen will not examine any Witnesses, but such as are material, and therefore let but one Council of a Side examine each Witness, and one cross examine.

*Mr Recorder for the Traverser.* A Trial of this Nature and Consequence, must of necessity admit of many Witnesses, but I will make it as short for the Court and the Jury as possibly I can, and produce but such Witnesses as are material.

*Mr Sollicitor for the Crown.* My Lord we will go on.

*Lord Chief Justice.* Read the List of the Witnesses on both Sides, how many are there ?

*Mr Serjeant Tisdall.* There are Eighty-two for the Crown.

*Mr Mark White, Agent for the Traverser.* There are about the same Number for the Traverser.

*Lord Chief Justice.* There is no Fact that can require so many Witnesses to prove it ; the Scriptures say, that *by the Mouths of two Witnesses, the Truth will be made manifest.* It is absurd and impossible to examine them all ; no one Witness shall be examined untill their Council open the Nature of their Evidence, and shew the Points that they are to be produced to. The

Points in the Indictment are, whether Lady *Altham* had a Child or not, while Mrs *Heath* was with her at *Dunmain*? And whether she knew that my Lady *Altham* ever had a Child, or whether she ever was with Child. These are but plain Matters of Fact.

*Mr Justice Ward.* The Time of the Court ought not to be taken up, but with such Evidence as is necessary fully to shew and prove the Points.

*Mr Justice Hasset.* I am sure Mr Sollicitor and the other Gentlemen, will not take up Time unnecessarily, but will proceed as readily as they can.

*Mr Smith for the Traverser.* The Prosecutor's Witnesses are in the Hall, I desire that they may keep off, as Witnesses ought not to come to hear the Testimony of others.

*Lord Chief Justice.* No Witness shall be examin'd that is in the Hall when others are examining, and therefore I desire that none may come there 'till call'd for.

*Mr Sollicitor.* I wish that the principal Persons to be examined for the Crown, and particularly Mr *Weldon*, could be produced this Day; I would then make no doubt of a full uncontraverted Conviction; but now as the Case is, and notwithstanding the great Dsadvantages of hurrying on this Trial at this Time, in the Absence of the Prosecutors, who alone were acquainted with the Strength of the Evidence, and in the Absence of the most material Witnesses, I make little doubt but the Traverser will receive a sufficient Conviction to the Satisfaction of all Persons, if the Witnesses who are to be produced,

duced, prove the Matters contain'd in my Brief.

*The Case stated by Mr Sollicitor.*

*Arthur* first Earl of *Anglesey* had five Sons ; his first *James*, his second *Altbam*, his third *Richard*, his fourth *Arthur*, and his fifth named *Charles*.

The Title of *Anglesey* was granted to *Arthur* first Earl of *Anglesey* by Patent by his late Majesty King *Charles II.* and to the Heirs Male of the Body of Earl *Arthur* ; and that Earl *Arthur* then had great Estates, Lands, and Possessions, and made great Acquisitions of his own ; but not being contented with this Dignity and Honour conferred upon him, had his second Son created Baron of *Altbam*, and to run to his other Sons in failure of Issue Male of his said second Son.

Earl *Arthur*'s second Son died without Issue Male, and the Title came to *Richard*, his Brother, the third Son of Earl *Arthur*, who was Father of the late Lord *Altbam*, and of the present Earl *Richard*, and his Estate and Honours vested in *Richard*.

*Arthur* the fourth Son died without Issue Male. *Charles* the fifth Son left one Son, *Charles*, now alive. This is the Pedigree of the Colateral Branch of the said Family.

*James* the eldest Son of the Earl *Arthur* married a Daughter of the Earl of *Rutland*, and upon that Marriage his Estates were settled in the usual Way and Course of Settlements.

The

The first *James*, who was the eldest Son of *Arthur* first Earl of *Anglesey*, after the Death of his Father Earl *Arthur*, had Issue three Sons of that Marriage, *James* his first, *John* his second, and *Arthur* his third Son; *James* the eldest Son as Tenant in Tail levied Fines, and suffered Recoveries, and thereby made himself absolute Tenant in Fee-Simple of the settled Estates, after the Death of his Father, and he having no Issue, made several Wills and Codicils, whereby *Arthur* his Brother was to succeed him; and if Earl *James* the Testator, and *Arthur* should die without Issue, then those of the collateral Line were, by those Wills and Codicils, to succeed.

They all died without Issue, and the Extinction of the direct Line in, 1737, by the Death of Earl *Arthur* without Issue, happened.

*Arthur* Lord *Alibam* died in 1727, leaving a Son, which I must contend for, upon the Foot of a most solemn and undoubted Verdict.

Upon the Death of Earl *Arthur*, the Son of *Arthur* Lord *Alibam* was not in *Europe*; but I will not go into any Evidence to prove how he came to be transported out of *Europe*.

*Lord Chief Justice.* No such Evidence shall be opened; but prove that *Arthur* Lord *Alibam* had a Son.

*Mr Daly.* The Evidence offered by Mr Solicitor is quite illegal, and I will shew it to be so.

*Mr Sollicitor.* Mr *Annesly* brought an Ejectment in the Court of *Exchequer*, in order to try his Title to an Estate in the County of *Meath*, and which was accordingly tried in *Michaelmas Term* 1743.

Mr

Mr Daly. Mr Sollicitor will take up the Court all Day, and I desire he will proceed.

*Mr Sollicitor.* I am a Judge of that, and do rely upon it that I have not spoke long, nor have I said any thing unnecessary as yet.

The sole Question on the Trial in the *Exchequer* on the Ejectment brought by Mr *James Annesly*, was, by the Admission of all Parties, whether Mr *James Annesly* was the Son of *Arthur Lord Altham* or not; and there was a solemn and incontestible Verdict found by a Jury of undoubted Credit and Fortune as perhaps ever was, after fifteen Days Trial and Deliberation, that Mr *Annesly* was the legitimate Son of *Arthur Lord Altham*; upon which Trial, Mrs *Heath*, the Traverser, was examined as a principal Witness, and for the Evidence she gave there, now stands Indicted in five Particulars.

The First is, That *Mary Heath* swore that *Mary Lady Altham*, who was Wife of *Arthur late Lord Altham*, never was with Child while the said *Miry Heath* lived with the said *Mary Lady Altham*.

The Second Point is, That Mrs *Heath* swore that the said Lady *Altham* never had a Child at *Dunmain*.

The Third Point is, That Mrs *Heath* swore that there never was a Child, as the Child of the Family of Lord and Lady *Altham* either christened or living at *Dunmain House* in the said County of *Wexford*, while Mrs *Heath* was at *Dunmain*.

The Fourth Point is, That Mrs *Heath* swore she never saw a Child in the Hands of *Joan Laffan*,

*Laffan*, while the said *Joan Laffan* was at *Dunmain Houle*.

The Fifth Point is, that the said *Mary Heath* swore that the said Lady *Altbam* never miscarried of a Child at *Dunmain* aforesaid.

And altho' it will be enough to prove Mrs *Heath* guilty of any one of them, and notwithstanding the great and many Advantages gained against us by Surprize, and hurrying on the Trial so prematurely, I doubt not of convicting her of the whole, and will now go on to shew what Mrs *Heath* hath swore.

*Mr Serjeant Marshal for the Crown.* The Trial had in the *Exchequer* by Mr *Annesly* was for Lands in the County of *Meath*, and the sole Question upon that Trial was whether Mr *James Annesly* was the lawful Son of the late Lord *Altbam*.

*Mr Daly.* We will not take up the Time of the Court, but will admit that Mrs *Heath* swore all the Facts laid in the Indictment against her.

*Mr Smith for the Traverser.* We will admit that, and also admit that the Traverser swore all the Facts alledged in the Indictment against her.

*Mr Serjeant Marshal.* The Traverser went from *Essex-street* with the Lord and Lady *Altbam* to *Dunmain* in the County of *Wexford*, and while she was there, Lady *Altbam* had a Child there, and from the Year 1713 until the Time of Lady *Altbam*'s Death in 1729, Mrs *Heath* lived with her Ladyship as her own Woman.

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*1st. Witness for the Crown. Mrs Henrietta Cole.*

I knew *Artbur* late Lord *Altham* and his Lady in the Year 1713, and went with my Mother Mrs *Brisce* to *Dunmain* in the County of *Wexford*, to see them in *February 1713*, as I believe the time to be.

*Council for the King. Did you know of any Accident that happened in the Family while you was there?*

*Mrs Cole.* There were some China Saucers with indecent Figures broke by my Lord *Altham*, who in a Passion threw them upon the Floor, at which my Lady took a great Fright and a fit of Trembling and was very ill that Night. My Lord *Altham* said when he threw the Saucers down, they were not fit to come before modest People. Mrs *Heath* told my Mother in my Hearing, that Lady *Altham* was very ill that Night.

*Council. What happen'd upon that, and what more did Mrs Heath say?*

*Mrs Cole.* She desired my Mother, who was then in Bed with me, to make haste up for my Lady was violently ill.

*Council. And what followed?*

*Mrs Cole.* I apprehend my Lady *Altham* then miscarried, for I saw the Miscarriage in my Lady's Closet, the Morning after in a Basin, at which time Mrs *Heath* was my Lady's Woman.

*Council. Had you any Discourse with Mrs Heath concerning Lady Altham's Illness?*

*Mrs Cole.* I believe I had, but cannot now charge my Memory with it; my Lady *Altham* was confin'd to her Bed for some time, and cou'd not get up.

*Council. Did you ever mention this Accident a  
any time after to any Person ?*

- *Mrs Cole. I believe I did acquaint Mr Monk's Family with it. I remember that the next Morning, I went into the Closet, and my Mother there shewed me the Abortion in a Basin, but I can't say that Mrs Heath was then in the Closet, and I understood in the Family my Lady's then Sicknes came by the Miscarriage.*

*And being Cross Examined.*

*Mrs Cole. My Lady Altham came to Town to my Father's Mr Briscoe's House in Bride-Street, and was there about a Month before my Lord came there to my Lady, which I believe was about the latter end of November, 1713.*

*My Lord and Lady Altham did not lodge at my Father's in Bride-Street all the Time 'till they went out of Town, but they lay there the Night they were Reconciled together. I believe my Lord and Lady soon after went away to another Lodging, and am pretty positive they did not continue to lodge at my Father's 'till they went to Dunmain. I cannot recollect that my Lady hired any Servants at my Father's, but I believe she hired Servants at Dunmain.*

*I believe she hired one Mrs Settrigt there, as she was there soon after my Lord and Lady went down there. I do not remember that my Mother was sick at Dunmain. My Father was not at Dunmain when the Saucers were broke there. I do not remember that I stood Gossip*

to Mrs Settrights Child at *Dunmain*, and I believe my Father did not come down to *Dunmain* 'till *February*. The Accident happened to my Lady in *March* or *April*, as well as I can recollect. My Father had been at *Dunmain*, but went away from it before the Accident happened to my Lady. To my Knowledge I did not swear when I was examined upon the Trial in the Court of *Exchequer*, that I went down to *Dunmain* in *March* or *April*, but if I said so, it must be a Mistake, for I was in a great deal of Confusion there, the Lawyers asked me so many Questions at one and the same Time. It was in the Month of *February* that I went down to *Dunmain*, and to the best of my remembrance it was in *March* or *April* that the Saucers were broke by my Lord. I believe I did say it was in the beginning of *Spring* when I was examined in the *Exchequer*, that I went down to *Dunmain*.

*How long was it after you went down that the Saucers were broke?*

I cannot be positive how long it was after I went down.

*Was it three Weeks?*

It was more than three Weeks, it was two Months, after I went down to *Dunmain* that the Saucers were broke by my Lord, and I remember that several were at my Lord's Table, but my Father was not then there when the Saucers were broke. My Lady sat at the Head of the Table and my Mether was near her, I believe my Lord sat at Table next to me, but I cannot be positive. My Lady sat at the Head of the Table, for my Mother got some

Cold, and sat near the Fire. We dined in the Room of the right Hand of the Street door as we go in. The China Saucers came there with Sweatmeats, and when my Lord emptied them, he threw them away, and they fell between me, my Lady, and my Mother, and my Lord said that they were Smutty. I believe, and am convinced that my Lord *Altham* knew that my Lady was with Child then. Before this Time I heard my Lord *Altham* say that my Lady was with Child. When my Mother shewed me the Abortion I was about Twenty Two Years of Age. When I was examined in the Court of *Exchequer* upon the Trial had there, I could not be certain about my Age, but I believe I then said I was about forty five Years old. I was born in the Year 1691, and I believe I might have said on the Trial that at the time of breaking the Saucers by my Lord I was about Fourteen Years of Age, but was not positive, and it was a Mistake, for since that time I have made a strict Search about my Age, and by the Parish Books of *St Nicholas Within*, I find I was born in the Year 1691, which I did not recollect at the time of the former Trial ; and I impute my differing so much in that Particular, to the extraordinary Behaviour of Lord *Anglesey's* Lawyers, who when I was examined on the last Trial, wou'd not give me time to recollect, but insulted me and cried out I was bribed, which confused me greatly. I was of Age when I went to *Dunmain*, and am now positive that I was Twenty-one Years Old. When my Mother shewed me the Abortion it had its Head and Limbs, and my Mother had

had something in her Hand that she stirred it with, I believe it was a Feather. I cou'd see the Limbs of it, it had large Eyes. Before I went into the Closet, my Mother told me of it, and I and my Mother went to the Closet together.

I never saw an Abortion before that time, and I believe I said on the former Trial, the reason I went into the Closet was that my Mother told me the Abortion was in the Closet. I believe upon the formal Trial I might have said that my Lord sat at the foot of the Table, at the time my Lord broke the Saucers, but being then called upon suddenly, and not knowing what Particulars I was to be examined to, had not Time to recollect Circumstances as I have since had. My Lady then sat at the upper end of the Table. We left *Dunmain* at the latter end of *May*, or beginning of *June*, and went to *Dublin* about the latter end of *July*. My Lady was not in Town when we came, and I remember when I came to Town, the first News I heard, was that Queen *Anne* was dead; and I remember I saw my Lady (soon after we came to Town) at Mrs *Vice*'s. I believe I might have sworn on the Trial in the *Exchequer* that my Lord and Lady left my Father's Capt. *Briscoe*'s House before they went to *Dunmain*, and am sure my Lord and Lady *Altam* staid but about Four or Five Days at my Father's House after the Reconciliation, but cannot be positive when they went to *Dunmain*. I saw my Lord and Lady *Altam* at their House in *Essex Street*, next Door to the *Ship*, after they were reconciled, and before they went

went to *Dunmain*. It was about the time that Queen *Anne* died, I visited them after their return, at the same House. I know nothing of *Sarab Weedon*, but believe *John Weedon* might be Coachman, but I don't remember *Sarab Foxe's* being at *Dunmain* when I was there. I did not know the Postillion *Burk* by that Name, nor can I say I went abroad with him from *Dunmain*, but I remember I went from *Dunmain* with some one of the Servants, but cannot particularly remember the Servants Name I went with. I staid away above a Fortnight at that time : I went to visit at Mr *Boyd's*, and staid there some few Days, and went from thence to other Places. It was one of my Lord's Servants attended me there. I knew one *Thomas* that was Butler to my Lord then ; I cannot take upon me to say certainly whether it was before or after the Abortion that I went to Mr *Boyd's*; there might have been Races at *Dunmain* when I went there but can't now remember there were any, or that a Girl run for a Smock. I believe I know Mr *Mark White*, that is he (pointing at him in Court.) I had some Discourse with him, and Mr *White* asked me if I knew any of my Lady *Altham's* Servants, and I told him I did, and then told him the Names of such of them as I knew, but I absolutely deny that I ever said to Mr *White* that I wou'd swear for my Lord *Anglesey* if my Leaf was renewed for me: And I am sure I never told Mr *White*, I wou'd be a very material Witness for my Lord *Anglesey*. I do not remember that there was a light in the Room that I lay in, with my Mother, when Mrs *Heads* came

came there to let us know my Lady was very ill, but I believe there might be a Fire there. (*Then looks at Mrs Heath.*) I know, and am positive that it was Mrs *Heath* that came to the Door, and I know her voice. I never did hear of an Abortion before my Mother told me of it, and shewed it to me.

*Old. Witness.* Samuel Jemmat, Esq; Doctor of Physick

I was employed by *Arthur* late Lord *Altham*, as his Physician, and the Physician of the Family for several Years, and often attended my Lady *Altham* as her Physician: And particularly I remember that about the latter end of *November* 1714, my Lord *Altham* called on me in his Coach, and told me his Lady had got Cold, and desired me to go to her: I waited on her, and saw her, and found she was very warm and feverish, and had a quick Pulse; where upon I ordered something for her to take that I thought proper; my Lady afterwards told me she was with Child; and I examining further, did believe she was with Child, and I ordered the Prescriptions that were proper for one in her Condition, and changed those I had ordered for her be-fore. She had long Spits as Women with Child have, and I found her Breasts turgid, and her Eyes circled like a Woman's with Child: she told me she had been as regular 'till two Months before, as ever she had. She was with Child then to the best of my Skill and Judgment. I bled her at that Time, and

and ordered the Prescriptions I had prescribed before, to be altered, when she told me she was gone three Months with Child, in order that neither she, nor the Child within her might be hurt. I verily believed her with Child, and gave her Directions how to manage during her Pregnancy.

*Are there any other Symptoms whereby you know she was with Child?*

I will tell the secret Symptom's and Disorders of a Woman with Child.

*Court. You must not give any such Evidence, it is not material.*

He then proceeds, being asked about the Time of his Attendance as sworn in his Affidavit.

I believe I did swear in my Affidavit, it was in November I was sent for to attend my Lady. I took my Doctor's Degree in the Year 1711, and have continued to practice ever since. There is no certain Rule by which a Pregnancy may be discovered from a false Conception, for the same Symptoms attend a false Conception that attend a real one: The College of Physicians in *England* and here too, may be deceiv'd in a Woman's being with Child.

*III. Witness for the Crown Mrs Helen Moncrieff.  
(Mr Walsh opens her Evidence.)*

I attend Ladys Lying-in as a Nursekeeper to them; I have lately attended my Lady *Mountjoy*, Madam *Butler*, and many other Ladys. I met Doctor *Chamberlain Walker* in *Stafford-street*, at one *Solomon a Jew's* House in Winter, 1714; and

and had some Discourse with him about my Lady *Altham*; and was recommended by him to her Ladyship as a Nurse: And accordingly went to my Lady shortly after; and in *January 1714-15*, having some Discourse with her, I asked her Ladyship how long she thought she was gone with Child, she told me not seven Months. My Lady was then as big with Child as a Woman six Months gone would appear to be; I was introduced to her to be a wet Nurse by Doctor *Walker*: I knew my Lady to be with Child by her Appearance and the Conversation between her Ladyship and me; and by laying my Hand upon her Belly was certain she was with Child, if any body can be certain by such Tokens as I then perceived: I afterwards refused being a Nurse to her Ladyship, because she would have me go to the Country to Nurse for her; and that I heard a bad Character of my Lord *Altham*. I am sure from my own Experience and Knowledge, that my Lady was with Child then. I told this some time ago to *Arthur Hill*, Esq; who I believe repeated it, and by that means I was brought here. I am positive Lady *Altham* was then with Child, if ever I was. Mrs *Heath* was then present; and I saw her; I understand her to be the same Woman that was there called Mrs *Heath*, being a very swarthy yellow Woman, and my Lady called her her Maid, but I can't say I shou'd know her by seeing her again. Mrs *Killy* the Mantua-Maker came there then to alter a Suit of my Lady's Clothes, and I believe the reason that she had them altered, was because she was with Child.

*Cross Examined.*

I attended my Lady and saw her on the Occasion three different times ; I had seen her Ladyship at my Lady *Lowth*'s, to the best of my knowledge in the Year 1713, three or four times, and saw a Man Servant of her Ladyship's there. No body was present when I felt her Belly. Mrs *Vice* saw me when I went to see my Lady *Altham* at her House. I made an Affidavit when I was called upon last Summer to know if I knew my Lady *Altham*, or any thing of her being with Child ; and at that time I did not know who I was to be sworn for. I left Lady *Lowth* about *February*, 1713. I was born the twelfth Day of *March* in the Year 1688 ; and I think it was in Summer or Harvest, 1713, I saw Lady *Altham* at Lady *Lowth*'s, but cannot be positive it is so long ago. I sat with Mrs *Vice* in her Bed-Chamber, at her House in *Essex-street* : My Hand was on my Lady *Altham*'s Belly under her under Petty-coat. I have been a Nurse-keeper these twenty-seven Years past. I cannot take upon me to know Mrs *Heath*, for I have not any perfect Knowledge of her Face : but the Woman who was called my Lady's Maid, was a thin swarthy Woman, with black Hair.

IVth Witness for the Crown. Mrs Margaret Bush.  
(*Mr Harward opens her Evidence.*)

I knew my Lady *Altham*, I saw her at *New Ross*; and she then seemed to me to be big with Child, pretty big. I saw my Lady there three or four Times about *February 1714*. The Reason I have to recollect the Time so particularly is, that it was about half a Year after the Death of Queen *Anne*, and my Lady and the People were then in Mourning for the Queen. Lady *Altham* talked of going out of Town shortly after I saw her, and then she appeared to me to be pretty far gone with Child. My Lady *Altham* had a Child; and I wished my Lord Joy of him upon the *Quay of Ross*.

*Court. Don't say any thing but what you know of your own Knowledge.*

I do not. I saw my Lady afterwards when she was not with Child, and to the best of my Remembrance saw her the latter End of *June* following in *Dublin*, and she was then very slender, and looked pale.

*Council. Did my Lady Altham tell you what became of that big Belly?*

*Court:* It is improper, we are now upon an Indictment for wilful and corrupt Perjury, and Hear-say is no Evidence in this Case.

*Mr Daly.* It is illegal Evidence, and ought not to be admitted, and by Authorities of Law I will shew it is illegal.

*Mr Harward.* Every thing ought to be asked the Witness, that will disclose the Truth, and no

Evidence can be offered to shew the Truth in this Case but Apprehensions of Witnesses arising from Facts ; and it is an undoubted Rule in Law, if a Man was indicted for Murder, the Witness against him when he lays Facts before the Court, that what he apprehended then of such Facts is good and proper Evidence ; and it has been often known that many have been convicted of Murder upon Circumstances only. And the Witnesses Apprehensions arising from Facts which he has Knowledge of, is the strongest Circumstance that possibly can be expected, more especially of a Matter of this Nature. And this I rely upon to be proper and good Evidence.

*Mr Recorder.* No Apprehensions of any Witness ought to be admitted as Evidence, for then every Witness as they pleased to be affected, may tell their Apprehensions to be what they please ; and no Man can be condemned for his Apprehensions, nor would there be any such thing as convicting a Man of Falshood.

*Mr Justice Ward.* No Apprehensions of Witnesses can be admitted as Evidence in this Case, though such Apprehensions might arise from Matters of Fact within their Knowledge ; for such Evidence could not possibly be a Conviction of wilfull or corrupt Perjury.

*Mr Justice Hasset.* It is proper to ask if my Lady was brought to Bed, if she knew her to be with Child.

*Court.* Ask her that, but you must not say any Thing Madam, but what you know yourself.

*Mr Harward.* We will ask her what was the general Repute of the Country.

*Court.*

*Court.* We will not admit That or any Hear-say Evidence; let the Witness tell what she knows herself.

*Witness.* To the best of my Remembrance I first saw my Lady *Altham* in *Essex-street*, beyond the Post-Office. I cannot tell the House, but the Chairmen carried me to my Lady's Lodgings; and after mutual Civilities, I asked her Ladyship when she heard from her Son? She said — ;

*Court.* What She said is no Evidence.

*Being Cross-Examined.*

In or about the Month of *February, 1714*, I visited Lady *Altham* at Mr *Samuel Stephens's* at *Ross*, but can't say how long I stayed in Town. I also saw my Lady at Mrs *Butler's* in that Town.

*Council for the Traverser.* Did you not tell the Miss *Butlers* that my Lady *Altham* never had a Son?

*Witness.* I told the Miss *Butlers*, when Mr *Ansley* first came over, that I doubted for some time whether he was my Lord *Altham's* Son or not; because I apprehended he was dead. But I never told them, or any one, that my Lady *Altham* never had a Son.

*3rd Witness for the Crown, Alice Bates.*

*Mr Robbins.* We will produce her to shew, that Mrs *Heath* knew, and said in Discourse with her, that my Lady *Altham* was with Child.

*Council.* Was you examined in the Exchequer?

*Witness.*

*Witness.* I was. I knew Lord and Lady *Altbam*. In or about November 1714, I saw my Lady *Altbam* at Mrs *Vice*'s. I know Mrs *Heath*, and had Discourse, and jested with her, about my Lady *Altbam*'s being with Child, in the Month of November 1714, and after. And I have jested with my Lady *Altbam* about her being with Child. Mrs *Heath* seemed to be well pleased at my Lady's being with Child. I knew my Lady was with Child, and that she grew bigger and bigger. I saw my Lady at Capt. *Briscoe*'s, when she was with Child. I heard Mrs *Heath* several Times speak of my Lady's being with Child. I was a Servant, and often was in my Lady *Altbam*'s Room with Mrs *Heath*, when they lived at our House.

I and Mrs *Heath* went to buy Muslin and then we had a good deal of Talk together about my Lady's being with Child. I know that Mrs *Heath* knew that my Lady was with Child. My Lady came to our House in *Bride-street*, in her loose Dress from her own Lodgings at Mrs *Vice*'s and she dressed at our House, and Mrs *Heath* brought the dressing Box there.

It was easy to see that her Belly was big. I saw her soon after, and her Belly was grown bigger. I saw her several Times dress'd and undress'd, Mrs *Heath* used to dress and undress her, and I saw an Alteration in her Belly growing bigger,

*Cross Examined.*

My Lady came to us about *October*, 1713, and she staid about four or five Days after she was

was reconciled with my Lord ; and went from Mr *Briscoe's* to Mrs *Vice's* : And my Lady went from thence to the Country a little before or after *Christmass*. She was in Town again when the Queen died : I never dress'd nor undress'd my Lady at Mrs *Vice's* ; but did dress her once at Mrs *Briscoe's*. When she came to Mrs *Briscoe's*, Mrs *Heath* followed her with her Band-box there. This was in t' e short dirty Days : it was after my Lord told me that my Lady was with Child. It was a little before or after *Christmass*, and there was a Quarrel between my Lord and my Lady, and my Lady said that he gave her a Box.

In 1713 my Lord and Lady left Town, and went to the Country. I cannot be positive when they went to the Country, in 1714 ; but my Lady left Town a second Time about *Christmass*, 1714.

I have joked with Mrs *Heath* about my Lady's being with Child ; and Mrs *Heath* was glad of it. I never asked Mrs *Heath* if my Lady was with Child, for she always spoke of it, and acknowledged it then. I was with Child myself about the Time that my Lady was with Child.

I know Mrs *Cole*, and know she was at my Lord *Altam's* at *Dunmain*. I believe Mrs *Cole* was not at that Time twenty Years old, but believe she was more than fourteen Years old, but cannot say if she was twenty, or not.

I saw my Lord in *Dublin*, in *November* 1714, and it was in *August* before he came to Town, as well as I best remember. When I undress'd my Lady, she was sometimes a little out of order

order, a little unwell. About *November, 1714*, I observed my Lady a little big bellied. The Tryal is false printed if it says that it was in *August* I talked with my Lady about her big belly.

*11th Witness for the Crown. Mrs Mary Sutton.*

*Mr Tisdal.* We produce her to prove that my Lady was with Child.

*Sworn.* I knew my Lord and Lady *Altbam*. I now live in the Parish of *Rowel* in *Kilkenny*, and I then lived within two Miles of *Dunmain*.

I knew my Lady *Altbam* when she was with Child, and knew her to be so. My Lord used often to come to our House ; and I was there on a Visit once at Dinner ; at my Lord's Desire, who desired me to come and see his Wife, and I toasted the Boy in the Box, meaning Lady *Altbam*'s being with Child, and after Dinner my Lady *Altbam* asked me if I cou'd recommend her a Nurse. This was the *Monday* or *Tuesday* before *Shrovetide*, after the Queens Death, and my Lady was then in Mourning for her. I observed then that my Lady was big with Child.

By all Appearance to me my Lady *Altbam* was big with Child ; I had a Certainty, if any one can be certain by their Eyes, my Lady *Altbam* seemed very big with Child. I do not know whether Lady *Altbam* hired a Nurse.

*Council for the Crown. Was there any Enquiry made for a Nurse ?*

*Council for the Traverser.* We object to such Questions, and the Court allowed the Objection.

*Witness.* My Lord and Lady *Altham* afterwards came to my House, and brought with them a Child, which I believed and understood to be my Lady *Altham's* Child. The Boy was about a Year and a half old, as I believe. I can't say when this was exactly, but it was in the latter end of Harvest; I think the Harvest but one after that in which the Queen died. The Child was treated by my Lord and Lady as their Child. This was about a Year and a half after I dined at my Lord's, and my Lady *Altham* told me when she came, that since I wou'd not carry my Daughter to see her Son, that she had brought her Son to see my Daughter. As well as I can remember, the Child was born about the latter end of *April*. There were then great Rejoicings at my Lord's, which was publickly known in that Country. My Daughter went to *Dunmain* to see the Child.

My Lady frequently invited me to go to see her, but I never dined more than once with my Lady.

### *Cross Examined.*

I was often invited by my Lord to his House, but never went there but once, after the time I dined there.

*Council for the Traverser. What did your Husband follow?*

*Witness.* He was a good honest substantial Farmer, and paid 10*l.* a Year Rent to *M-*

dam *Piggot*, but the Land we held was worth 40*l.* or 50*l.* a Year. It was an old Lease.

*Council for the Traverser.* How came you to be invited by my Lord, and you but a Farmer's Wife?

*Witness.* Because we were in the Neighbourhood, and I and my Husband were old Inhabitants. The Land my Husband had was worth four Shillings an Acre, and he had above 200 Acres or there abouts. I cannot justly remember how many Harvests this was after the Child's Birth that my Lord last invited me. I do not know *Mary Heath*. I can't be positive as to the Month my Lord and Lady visited me, but believe it was about a Year and a half after I visited them, which was after Queen *Anne*'s Death. My Lady and her Maid came together in a Chariot with the Child, and my Lord and his Servant rode. I think the Child had a red Coat with a Cambric Cap. My Husband is dead, and I now live with my Daughter, who lives under my Lord *M<sup>r</sup> Garret*.

VII<sup>th</sup>. *Witness for the Crown.* Evan Thomas.

*Mr Serjeant Marshall.* We produce him to prove that my Lady *Altbam* had a Son, and that the Witness made a Cradle for him.

*Sworn.* I knew the late Lord and Lady *Altbam* in the Year 1713, 1714, and in the Year 1715 I lived in *Ross*. I saw her in the Year 1714 at Church, at *Ross*. I saw her three or four times at *Ross*. My Lady appeared to me to be

be with Child, and it was so said by every body.

*Court.* You must say nothing but what you know of your own knowledge.

I am a Basket-maker, I deal in all sorts of Goods of that kind, and have worked for my Lord and Lady. A Servant came to me from them in 1715, to bespeak a Cradle for my Lady's Child, as it was expected she wou'd soон Lay-in. I made a Cradle and delivered it to my Lord's Servant, who came for it before I had time to carry it home, and I was paid two Crowns for it by him. The Servant told me at the same time that it was for my Lady's Son, who was brought to Bed.

VIII<sup>th</sup>. *Witness For the Crown.* Martha Tenant.

*Mr Harding.* We produce her to prove that my Lady *Altham* was with Child.

*Sworn.* I knew my Lord and Lady *Altham*, and saw them at *Arthur Frenche's* about the time of the great dispute between Whig and Tory, it was then about *Christmas*. Mr *Frenche* was then lately married to my Lady *Davis's* Daughter. There was a great Dinner preparing at Mr *Frenche's*, and my Lord and Lady were there. I had not seen them before that time, but was told it was Lord and Lady *Altham*. My Lady was a tall Woman full-breasted, and my Lord was a little Man, and had both his Eyes at that time. My Lady retired into another Room, being sick, and when she recovered a little, my Lord said to

Mrs *Frenche*, who had been lately married, he hoped soon to see her in the same Condition, which I understood to be in the same Condition with my Lady *Altbam*, with Child.

IXth Witness for the Crown. *Annstace Toole.*

*Mr Morton.* We produce her to prove that my Lady was with Child, and that she had a Child, and that the Witness made Clothes for my Lady when with Child, and also made Clothes for the Child.

*Sworn.* I knew my Lady *Altbam* about the *Candlemas* after Queen *Anne* died ; and my Lady was then big with Child. I fitted a Gown on my Lady in presence of Mrs *Heath*. My Lady was a tall Woman and carried her big Belly well. I then worked with my Lady's Mantua-maker ; and I afterwards saw my Lady's Child, and made a Coat for the Child about a Year after I fitted the Gown on my Lady *Altbam*. I know Mrs *Heath* (pointing at her.) My Lady *Altbam* when I fitted on the Gown seemed to be in her last Quarter. I had my first Child before that time. My Lord himself gave the Silk : it was a Year after I fitted the Gown on my Lady that I saw my Lady's Son and made a Coat for the Child. Mrs *Heath* was not present when I fitted on the Child's Coat. I saw the Child after I made him a Coat but once.

*Cross Examined.*

I can't be positive how long after I fitted the Gown on my Lady that I last saw the Child, for it was after my Lady came to *Ross*; she came there on *Sunday* Evening, and it was after my Lord and Lady's Separation. My Lady first lodged for about six Weeks with Capt. *Butler*. I saw the Child but once after the Separation, it was at my Mistresses Mrs *Wright's* in *Ross*, where my Lady lodged for about a Year, and afterwards lodged at Mrs *Grubb's*. The Child was when I saw him at Mrs *Wright's* about two Years old, and Mrs *Wright* told me that it was my Lady *Altbam's* Child.

*Court.* You must say nothing here of what was told you.

*Xth Witness for the Crown. Ann Bennet.*

*Mr Fitz Gerald.* We produce her to prove that my Lady was with Child.

*Sworn.* I knew my Lord and Lady *Altbam* in the latter end of the Year 1714. They lived then at *Dunmain*, and I lived at *Ballysop* with Mrs *Giffard*. My Lady *Altbam* was with Child: and I knew it, for she looked very round, and every way like a Woman with Child, and I believe in my Heart, and was then throughly convinc'd, she was with Child. I was then about twenty Years old, and am now about fifty two Years old. I afterwards heard

heard that Lady *Altham* was brought to bed of a Son.

*Council for the Traverser. You must say nothing of what you heard.*

*Cross Examined.*

There was an Intimacy between my Lady *Altham* and Mrs *Giffard*, for they often visited one another ; and Mrs *Giffard* knows my Lady was with Child.

*XIth Witness for the Crown. Edmond Howlet.*

*Mr Harding.* We produce him to shew that my Lady *Altham* was with Child, and had a Son.

*Sworn.* I knew my Lord and Lady *Altham*, and of a Child that they had. I went to *Dunmain* to my Lord's, and sold a Piece of Diaper to Mrs *Heath*, who told me that it was for Clouts for my Lady *Altham*'s lying in. I often went there with Goods to sell. I do not remember that I saw Mrs *Heath* since my Lord and Lady parted, but I saw her often before. It was sometime after *Christmas* about thirty Years ago that I sold the Diaper.

I sold Cambricks, Muslins, Linnen Cloths, Handkerchiefs, &c. and have so done for above thirty five Years past, and often went to my Lady's House to sell such things. I afterwards saw Mrs *Heath* and the Child in my Lady's pleasure Garden, and my Lady then bid Mrs *Heath* buy a Hood and a Handkerchief

chief of me, which she did, and paid me for it, and gave it to the Child's Nurse. My Lady afterwards bought some Holland of me, for four or five Pound, and after my Lord and Lady parted, I lost the four or five Pound that was due to me.

I was present, the Day my Lord and Lady parted, and saw my Lady *Altbam*, Mrs *Heath*, and the Child in a Coach going away, and my Lord came in a great Passion and forced the Child out of the Coach from my Lady, and my Lady then said, my Lord, you gave me your Word, that you wou'd let the Child go with me wherever I went : and the Coach then went away, and to my best remembrance it was about the middle of the Day, 10 or 11 o'Clock, but cannot be positive. The Woman that I take to be Mrs *Heath* was present at all this.

#### *Cross Examined.*

I have been a Dealer for about thirty five Years. I lived at the Time that my Lord and Lady parted at *Ballyteskin*. I knew *Nelly Murphy*, being she is my Sister. She has not been married thirty Years as I believe, but believe that she has been married about twenty Years, and she then went by the Name of *Eleanor Murphy*. She was thirty Years ago called *Nelly Howlet*. I made an Affidavit about *August* last, and believe that I swore it before Dr *Stopford* in *Dublin*. I cannot tell whether they called me an Agent in it ; if they did it is a Mistake. It was read to me, but

but I can't tell who drew it, it was some one from Mr *Annesly*. I am sure it was read to me before I swore it. Says that he told the Matters of the Affidavit in *Dublin* about the *Diaper*, &c. I do not know whether I was called Agent in the Affidavit or not. I believe I never called myself Agent, but that I told the Person who drew the Affidavit, that I had some Land from Mr *Baily* in care. I believe I was examined before the Commissioners.

The Coach or Carriage that my Lady *Altham* went in had four Wheels. It was not open at the Top to the best of my Remembrance. I cannot be particular whether there were two or four Horses in it; how can I remember such Things after thirty Years? I think one *Dennis Cantell* was then Coachman to my Lord *Altham*. I believe my Sister went to *Dunmain* a little after I sold the *Diaper* to make the Clouts. It was before the great Darkness I am now about fifty five Years old.

*Council for the Traveller. Did your Sister Nelly live with one Mr Ram?*

*Witness.* I do not know, but I think she lived at Capt. *Butler's*. I have travelled *Wexford*, and most of *Leinster*, and remember the great Darkness. I was that Day coming home, and was near home when it began. I was not at *Dunmain* that Day, I can't remember that I was. It was before the Eclipse that my Sister went to live at *Dunmain*; and afterwards she left it, and went to live at one *Mr Frank White's*.

**XIII<sup>b</sup> Witness for the Crown. Newton  
Rickets.**

*Mr Marshal.* We produce him to shew that my Lady *Altbam* was with Child.

*Sworn.* I knew the late Lord *Altbam* and his Lady, and have seen her at *Dunmain* about thirty one or thirty two Years ago. I am a Coachmaker by Trade, and was often employed for a considerable Time by my Lord *Altbam*. I made a small Chair with Wheels for a Child in the House then called Mr *James Annelly*; and it was my Lord directed me to make it, and my Lady was then present. I never asked whose Child the Boy was, but always took and understood him to be my Lord and Lady *Altbam*'s Son, as all other People did at that Time. My Lord called him *Jemmy*. I saw the Child there often. He was well dress'd, as People of Quality's Children generally are, and my Lady *Altbam* behaved to him as Mothers do to their Children.

*Cross Examined.*

It is about twenty eight Years since I made the Chair, and I then saw the Child. He was then about a Year and a half old. The Child was then in the Care of *Joan Laffan*. I believe *Anthony Dyer* and *Martin Neefe* were in the Family when the Child's Chair was bespoke. I knew *George Nixon* and *Henry Miltward*, but

F never

never had any Discourse with either of them about the Child's Birth. I am now fifty four Years old, and worked for my self and my Father. I believe I was about twenty four Years old when I was at *Dunmain*, and saw the Child there. I now live at *Bederstown* within four Miles of *Wexford*.

**XIII: b Witness for the Crown. Elizabeth Doyle.**

*Mr Walsh.* We produce her to prove that my Lady *Altham* was with Child, and had a Son.

*Sworn.* I knew my Lady *Altham* at *Dunmain* when she was with Child. Knew she was with Child by her big Belly. It was about *March* after Queen *Anne* died, I saw her Ladyship. My Lady hired my Mother when I was present to nurse the Child; but my Mother was taken with a Fever, and could not nurse him. I was present when my Lady hired my Mother, but do not remember any one else was present but us three, and my Lord *Altham*. This was at *Dunmain*.

**Cross Examined.**

I am about forty six Years old, and did not live any nearer to *Dunmain* than *Camolin*, but now live at *Wexford*. I lived at *Gorey* when I went last to *Dunmain*; my Father was a Brickmaker, and was making Bricks at *Dunmain* for my Lord; and my Mother was a carrying me to *Waterford*, to see some Relations, and made that her Road, which was

the

the Occasion of my going there. It was in the left-hand Parlour my Mother and Lady *Altham* were. I went to *Dunmain* last Harvest, and went there to serve Mr *Annesly*, and to give an Account of what I could tell. Madam *Cole* desired me to go with her there. I spoke to all the Gentlemen there, *viz.* Mr *Annesly*, Counsellor *Fitz-Gerald*, Mr *Macker-ber*, and others, but did not take very great Notice of the House at *Dunmain*. I was twelve Years absent from *Dunmain* before that Time. I never was examined in the Court of *Exchequer*.

*Did you make any Affidavit in August last?*  
I made no Affidavit in *August*.

**XIV<sup>th</sup> Witness for the Crown. James Sinnott.**

*Mr Sollicitor.* We produce him to shew that my Lady was with Child.

*Sworn.* I knew the late Lord *Altham* at *Dunmain*, and lived within six or seven Miles of it. I saw Lady *Altham* when with Child at the House of *Dunmain*. I went there with Mr *Anthony Colclough* about Spring, about this time thirty Years, and Mr *Colclough* then called her Lady *Altham*. She then seemed to be very big with Child. I was afterwards at *Dunmain* with a Gentleman, Mr *Rider*, and saw a Child there, who Lord *Altham* ordered to be brought for Mr *Rider* to see his Son. I did not see Lady *Altham* that Day, but saw her sometime about *May* or *June* after, but can't be positive. It was about *Michaelmas* after I saw my Lady with Child that I saw the Child.

I often saw Lord *Altbam* at my Father's House and at *Dunmain* before that time.

*Cross Examined.*

I was not at *Dunmain* in my Lord's Time after I saw the Child there. I dealt in Malt. I know of no Quarrel between *Anthony Col-clough* and my Lord. I was not examined in the Court of *Exchequer*. It was in *March* or *April* I saw my Lady, and believe she was brought to Bed the *May* following. I did not take particular Notice what sort of a Woman my Lady was, she was neither tall nor short, but about the middle Size.

*XVth Witness for the Crown. Mr James Fitz-Patrick.*

*Mr Tisdall.* We produce him to shew that my Lady *Altbam* had a Child.

*Sworn.* Says, he knew Lord and Lady *Altbam*, and knew *Dunmain*. I was often there, and saw Mrs *Heath* there, but don't believe I should know her now. I saw a Child there when my Lady lived at *Dunmain*, which I took to be my Lady *Altbam*'s Son. I saw the Child one Day at *Dunmain*, when my Lord was kissing *Mary Heath*, and playing with her, who then said she would call to my Lady if he would not be easy, and let her alone; and I then took the Child to be my Lord and Lady *Altbam*'s. My Lord afterwards introduced the Child to me as his Son, and

and was very fond of him. The Child was well dress'd, and I always took him to be my Lord's legitimate Son: I was most intimate there after the Separation of my Lord and Lady *Altham*. I saw the Child before the Separation, but I do not remember to have seen him in my Lady's Company to the best of my Knowledge. But there was certainly a Child when *Mary Heath* was there, and before Lady *Altham* left *Dunmain*, which was reputed to be a Child of the Family, and my Lord was as fond of him, as he was of his own Eyes.

*Cross Examined.*

I live at *Cross* in the County of *Wexford*. I was not examined upon the Trial in the *Exchequer*, nor before the Trial in the *Exchequer*. I did not then know Mr *Mackercher*. I was not subpæned upon the former Trial, but was subpæned upon this Trial, much against my Will, and did not desire to appear in it. I took the Child to be Lord *Altham's*, he seemed to be about eighteen Months old. I believe my Lady was at *Ros* shortly after the Separation. The Child was carried in a Woman's Arms when I saw him, and did not walk. The Maid who took care of him was dress'd clean, and the Child was dress'd very clean.

XVI<sup>th</sup> Witness for the Crown. Jane Murphy.

*Mr Moreton.* We produce her to prove that my Lady was with Child, and had a Child.

*Sworn.* I knew Lord and Lady *Altbam*, but saw my Lady but once; which was twenty nine or thirty Years ago. I lived four Miles from *Dunmain* at *Salt Pits*, and saw a Child with Lady *Altbam*. I went to *Dunmain* to be hired as a Nurse for the Child, and saw a Child about a Month old there.

*Who was with it?*

A Woman like a Servant brought it down, and my Lady *Altbam* was present then. I do not know Mrs *Heath*. I thought the Child was my Lady's; and so my Lady told me. I did not get the Child to nurse, because my Lady would not let me take him home to nurse, and I would not nurse him in the House.

XVII<sup>th</sup> for the Crown. Denis Redmond.

*Mr M'Manus.* We produce this Witness to prove that my Lady was with Child, and was brought to Bed of one.

*Sworn.* I knew Lord and Lady *Altbam*, and was a Servant to them at *Dunmain*. I have frequently seen my Lady, she was with Child at *Dunmain* during my Service. She had a Child there, which was reputed my Lord's, and all the Servants said so.

Mrs *Heath*

Mrs *Heath* sent me to *Ross* for a Midwife, one Mrs *Shields*. I know Mrs *Heath*, that is she, (pointing at her) I found the Midwife Mrs *Shields*, and brought her to *Dunmain*, and it was said after I brought her there that same Night, there was a Son delivered from my Lady. I saw the Child in about a Month after, which every one said was my Lady's Child. There were great Rejoicings the Night after the Child was born, at my Lord's. I many Times after saw the Child in the Hands of Mrs *Heath* and *Joan Laffan*.

*Cross Examined.*

I did not know that Mrs *Ether* wanted a Midwife at that Time, nor at any other, nor did I go for one for her. I never had any discourse with *Sutton* about bringing a Midwife to Mrs *Ether*, nor with any one. One *Mcagher* was Butler to my Lord *Altbam* at that Time, *John Weedon* was Coachman, and *Anthony Dyer* was a Servant. *Weedon's* Wife lived at a Bridge below the House. I do not remember Mrs *Settright*. I cannot recollect whether Mrs *Weedon* was there at that Time the Child was born, or whether *Joan Laffan* was there. I saw the Child in the Care of *Laffan* both before and after the Separation. I remember the Separation, and to the best of my remembrance it was on a Holiday. I cannot say whether it was Morning or Evening. I can't say how long I liv'd at my Lord's after the Separation, but my Lady went to

*Ross*

*Ross* after it *Joan Landy* had my Lord's Child Nursing. I can't remember the length of Time I was in the Service before my Lord and Lady came down to *Dunmain*, but to the best of my knowledge it was about a Year. I saw the Child in the House, before and after the Separation. I was there in the Service above three Years. I was there before *Sarab Weedon* came down. I do not know whether she was an *Irish* Woman or not, but she spoke so that it was not easy to understand her. *Joan Landy*'s Child was not brought to *Dunmain* after my Lord and Lady's Separation. I understood from some People that *Joan Landy* had a Child by my Lord, and believe she Nursed her own Child herself for some Time. I do not remember that I swore on the Trial in the *Exchequer* that *Joan Landy* was Servant at the House of *Dunmain* when my Lady came down there, nor do I believe that I did.

XVIII<sup>th</sup> *Witness for the Crown*, Eleanor Murphy.

*Mr Fitzgerald*. We produce her to shew that my Lady was with Child, and that the Witness was present at the Birth of it.

*Sworn*. I knew my Lord and Lady *Altbam*, and lived with them at *Dunmain*. I knew Lady *Altbam* was with Child, and I saw my Lady delivered of the Child. Mrs *Heath* desired me to bring up a Sauce-pan of warm Water. Mrs *Heath* was then my Lady's

Lady's own waiting Maid. Mrs *Heath* desired me to warm the Water, and I warmed it at the Parlour Fire, and Mrs *Heath* met me with it, put her Finger in it, and took a Bottle of Brandy, and mixed some of it with the Water, to wash the Child. The Child was a Boy, I saw it was a Boy; I saw Mrs *Shields* cut the Naval String of the Child. Several Ladies were in the Room, but cannot remember any of them but Mrs *Butler* of *Ross*. There were great Rejoycings, and a Bonfire was lighted the Night after the Child was born. In about a Month or five Weeks after that, the Child was Christened, and there was great Joy then; Dr *Lloyd*, Minister of *Ross* Christened him, and Mrs *Heath* brought word down Stairs and told the Servants, he was called *James Annessy*. I saw the Child several times afterwards; and saw Mrs *Heath* often dress him. I staid there about a Quarter of a Year after he was carried away to be nursed by *Joan Landy*. I can't remember I ever saw the Child after I left *Dunmain* but once. When I left *Dunmain* I went to *Ross*, and saw the Child thereafter with my Lady. *Annessy* was his Surname, and *James* his Christian Name.

*Cross Examined.*

Madam *Butler* was present when the Child was born, and so was *Mary Doyle*, a Servant, and Mrs *Heath* who was going backward and

G forward

forward. I can't say how long *Mary Doyle* was at *Dunmain* at that Time. I believe I was in the Service before *Mary Doyle*, and I was there about a Quarter of a Year before the Child was Born. and near about half a Year after I was under **Laundry Maid**, to wash the course Linnen. I can't remember what the Head Laundry Maid's Name was, it was a hard Name. I remember I was at Capt. *Butler's* when the great Thunder and Rain was in the Morning. It was since the Child was born, but I did not then live with Capt. *Butler*, there was a great Rain, and it was after I left *Dunmain*. *Lady Altham* was at *Dunmain* when I was hired, and *Mrs Heath* hired me. I was not at *Dunmain* before my *Lady* came down there. I do not remember my *Lady* was out of the House for any length of Time while I was there. I did not see *Lady Altham* before I saw her at *Dunmain*. I did not say in the *Exchequer*, I was at *Dunmain* when my *Lady* came down, or that I saw my *Lady* before at Capt. *Butler's*. *Anthony Colclough*, *Mrs Pigot*, and *Counsellor Cliffe* were Gossips, as I have heard. *Mrs Weedon* was not then at the House, she was below at the Bridge where she lived; I was then called *Nelly Howlet*, but I do not remember or know *Mrs Settright*.

**XIXth Witness for the Crown**, *Mary Doyle*.

Mr *Harward*. We produce her to prove the Birth.

*Sworn*

*Sworn.* I knew Arthur late Lord *Altham* and his Lady; I was their Servant about thirty Years ago this *May*. Lady *Altham* was with Child, and was delivered of that Child at *Dunmain*; I was present at the Delivery of him, and two or three Servants were also present, Mrs *Heath*, *Eleanor Murphy*, Mrs *Butler*, and some other Gentlewomen, but cannot remember them. The Child was Christened by Mr *Lloyd* of *Ross*, and Mr *Colclough*, Mr *Cliffe*, and Mrs *Pigot* were Gossips; there was great Rejoycing at *Dunmain*, the Night after the Child was born; there was the best of Meat, Drink, &c. and there was a Bonfire. *Joan Landy* nursed the Child; and I left the House a few Days after the Christening. Mrs *Heath* was in the Room at the Time of the Delivery of the Child, all the Time

*Cross Examined.*

*Joan Landy* the Child's Nurse was married to one *M'Cormick*. The Christening was about the latter end of *May*, or beginning of *June*; I believe it was about three or four Weeks between the Birth and the Christening of the Child. I was Chamber-Maid, and was three Months in the Service before the Birth of the Child. I did not know *Eleanor Murphy* before I saw her at *Dunmain*. I have a Son about thirty Years old, his Name is *Edward Cosgar*. I was married about thirty five Years ago. I now live at *Duncannon Fort*. I did

live at *Ratbilly*, but it is above thirty Years ago since I lived there, I lived before at *Haroldstown*. From *Ratbilly* I went to *low Grange*. *Daniel Hugh*, my Husband's Nephew lived in Service with me at *Ratbilly* and *Grange*, and several Places in the Counties of *Wexford* and *Wicklow*, before I went to *Dunmain* to live at my Lord's. *Robert Cosgan* is my Husband's Brother. One *Fitzgerald* lay at my Lord *Altbam*'s one Night, but don't know whether he was a Major or not, I do not remember I saw *Sarah Weedon* at my Lord's but once or twice. *Nelly Murphy* was the under Laundress, and *Mcagher* was the Butler.

*Court.* Let *Mary Doyle* and *Eleanor Murphy* attend the Court.

*XXth Witness for the Crown*, *Mary Freeman*.

*Mr Harward.* We produce her to shew my Lady was with Child.

*Sw.* I knew Lady *Altbam*, I think it was about *Chr stmas 1714*, when I lived at *Mrs Pigot's* at *Tintern*, and I knew her to be big with Child. It was about *Christmas* or *Candlemas*, the first Year of King *George* the Ist. that I saw her there; I saw my Lady several times afterwards at *Dunmain*. I saw the Child with *Joan Laffan* mighty well dreft, and I also saw the Child with *Mrs Heath*; I was sent with a Letter from *Madam Pigot* to my Lady *Altbam*, which I delivered to *Mrs Heath*, who told me that my Lady was not well, and cou'd

cou'd give no Answer, and *Joan Laffan* had the Child in her Arms then. I saw *Mrs Heath* playing with the Child at *Dunmain*, who took notice of the Child as Lord and Lady *Altbam*'s Son, and the Child was so reputed ; I took notice of it as a Person of Quality's Child. It was then about a Year and a half old, he was called the Young Lord, and was called Mr *Annesty*. It was after Counsellor *Pigot* broke his Leg, I went with the Letter, and *Mrs Pigot* went to him. I saw the Child afterwards at Madam *Butler*'s at *Ross*, and *Mrs Heath* was there present also.

*Cross Examined.*

The Year King *George* the Ist. came in, I saw my Lady *Altbam* at *Mrs Pigot*'s about *Christmas*, or between that and *Candlemas*, and it was after Mr *Pigot* broke his Leg, that I went with the Letter to Lord *Altbam*'s.

*XXIst Witness for the Crown, Thomas Elton.*

Mr *M Manus*. We produce him to shew that my Lady was with Child.

*Sworn.* I know *Dunmain*, and was often there. To the best of my Memory I was bound an Apprentice in *New Ross* in the Year 1715, and was several Times at *Dunmain* in that Year, and was also there in the Years 1716 and 1717, and untill the Time of my Lord and Lady's Separation, whatever Time that was. I saw my Lord and Lady *Altbam* in

the Year 1716 at *Dunmain*, and also saw *Mary Heath* there. I saw a Child there, the Son of Lord and Lady *Altham*. I was then at Work in the House. I was at Work in the House in the Year 1716 putting some Panes in the Windows of my Lady's Room; Lady *Altham* desired *Mary Heath* to bring up the Child, and she sat on the Bed and embraced it, and my Lady had the Child in her Arms for some time kissing and embracing him. I cannot say whether it was before or after *Christmass*.

*Mr Proby, one of the Jurymen.* I met the Witness on the Road, as I was coming to Town, who told me he was subpæned, and he swore by his Maker, he knew nothing of the matter, and said he had nothing to prove.

*Mr Proby the Juryman Sworn.*

I was coming to Town and met *Elton* the Witness on the Road, coming to Town, and having some Discourse together, *Elton* told me that he did not know what he was to swear, he said by *God* he knew nothing of the matter, and that he was subpæned to appear upon this Tryal, and that he was in so great a Passion that he threw the Subpæna and the Shilling that he got with it into the Fire,

*Mr Proby Cross Examined.*

Does not know or apprehend that the Witness meant that he knew nothing about the Child.

XXII<sup>d</sup> *Witness for the Crown.* *Mr Thomas Higginson.*

*Mr Sollicitor.* We produce him to shew that my Lady was with Child.

*Sworn.* I knew Lord and Lady *Atbam*, and have seen her several Times. I saw her about the middle of *April*, 1715, and also saw my Lord in that Year. I was Receiver to him. My Lady was with Child in *Easter-Week* in that Year at *Dunmain*, and she appeared to me to be very near her Time. My Lady made me drink, and I drank to her happy Hour. This was on *Easter Tuesday*, and that Day I went to *Eniscorthy*. I gave a Book to *Mr Prime Serjeant*, who was of Council for Lord *Anglesey* at the last Trial in the *Exchequer*, which contained an Account of Receipts and Payments of my Lord's Rents, &c. and a Receipt of Lord *Atbam*'s for 28*L.* dated *April 21*. My Lady came down Stairs to me when I went to *Dunmain*, and ordered me two Glasses of Wine, and I drank a good Delivery to her; I did not then see my Lord at Home. I went from thence to *Eniscorthy*, and on the *Thursday* following I went to the *Assizes of Wexford*. I saw my Lord *Atbam* there at that Time, but did not see my Lady, nor hear of her being there; it is possible she might be there, but it is very improbable; for I left her at *Dunmain* the *Tuesday* before. I believe I should have heard it, if my Lady had been at the *Assizes* then.

*Cross*

*Cross Examined.*

I was at *Dunmain* on *Easter Tuesday*, and saw my Lady *Altbam*, there. I was at Mr *Houghton's* on *Easter Monday*; 'tis in the Neighbourhood. The Reason I remember it is, I received Money and entered it in my Pocket-Book. *Pepard Castle* is fifteen Miles from *Dunmain*. I was at *Clomines* on *Easter Sunday*.

Mr *White*, one of the Attornies for the Traverser, shews him several Receipts, which the Witness says are his Hand-writing.

*Witness.* Some Receipts I dated the Day I gave them, and some not.

A Receipt dated the eighteenth of *April*, 1715, shewn to the Witness:

*Witness.* I gave the Receipt to my Son to go for the Money: 'tis to *William White* for Money then and formerly received, for Rent of *Pepard Castle*, due to Earl *Arthur*; 'tis dated *Easter Monday*, and the Figures are of my own Hand-writing. I entered this Receipt in my Pocket-Book on *Wednesday* following, when I received the Money; but by the Entry in the other Book, it was entered the eighteenth, the Day I expected my Son was to receive the Money at a Fair. I received 4*l.* odd Money on *Monday* the eighteenth of *April* from Mr *Houghton*, and 10*l.* from Mr *Giffard* on *Tuesday*. I had sent eight different Receipts by my Son before I left Home to receive Rent. That Receipt dated the

the eighteenth I sent by my Son before I left Home, expecting he would receive the Money the eighteenth at a Fair, and he did not receive the Money 'till *Wednesday* after.

A Book is produced to him.

*Witness.* I kept it, the Book contains Receipts of Rent, the Day, Month, and Year. I entered the Money in that Book, when I sent the Receipts for the Rent I entered in my Pocket-Book, *Tuesday* the nineteenth, on which Day I was at *Dunmain*. I swore upon the former Trial that I received 4*l.* on *Easter Monday*, and 10*l.* from Mr *Giffard* on *Tuesday*.

Asked, *If he did not swear on the former Trial that he received 20*l.* on Easter Monday for Rent of Clomines?* The Book is produced to him.

*Witness.* One Line of it is my Son's Handwriting. I received a Bill that Day from the Tenants, and entered it in the Book produced, as Cash; every one of the Tenants had a Share in the Bill.

*Mr Recorder.* 'Tis plain his Entries are no sort of Guide to him.

Asked, *If he did not swear on the Trial, that he received Rents for my Lord from the Year 1711 to the Year 1717.* Says, he received Rents from 1711 to 1716, and in 1716 he received, but not in 1717, nor did he ever say he did.

A Deed-Pole, dated the 26th of *December*, 1715, signed *Thomas Higginson*, and sealed, is produced to him, and admitted by him

to have been executed by him, which, as was alledged, importeth that Earl *Arthus* had sometime before discharged him from the Receipt of Rents, and therefore binds him to account for the Rents received by him.

*Mr Serjeant Marshal.* The Bond must be entirely read over.

The Words are, *that he shall receive the Rents within a Year after the Date of it*, and *Mr White*, Attorney for the Traverser, read it, but by Halves. *Bond read through.* It is of the Penalty of 1000*l.* the Condition is, That if on or before the first of May then next following, *Thomas Higginson* (the Witness) shall account for and pay, or cause to be paid, so much as he received of my Lord's Rents, or shall from one Year after the Date of the Bond truely account, that then the Bond shall be void.

*Lord Chief Justice.* 'Tis plain that the Witness's Memory is not found; let the Bond be given up to the Jury. *The Bond is given up, and they read it.*

**XXIIId. Witness for the Crown.** John Warren.

*Council for the Crown.* We produce him to shew Lady *Altbam* was big with Child, and had a Son.

*Sworn.* I knew Lord and Lady *Altbam*, and was at *Dunmain* when they were there, and was there several Times when they were there. I saw a Child there called *James*, my Lord and Lady called the Child their Son. I never was a Baker, nor have I any Trade.

**XXIV**

XXIVth *Witness for the Crown.* Robert Kenite.

*Council for the Crown.* We produce him to shew my Lady was with Child.

*Sworn.* I knew my Lord and Lady *Allbam*. I lived at *Garryduffe*. I knew them at *Dunmain*. My Lady was with Child there in my Opinion, for I saw her big. I saw the Child at *Dunmain*, and saw Bonfires for Joy of the Birth of the Child my Lady had. I did not know Mrs *Heath*. I saw no Bonfires but once, which was at the great House of *Dunmain*, for the Birth of an Heir to my Lord.

XXVth *Witness for the Crown.* Joan Laffan.

*Sworn.* I knew Lord and Lady *Allbam*, and was at first Chambermaid to them at *Dunmain*, the Year after Queen *Ame* died, the very Year after King *George* the First came in ; and staid there about a Year, or a Year and a half, as Chambermaid, and was afterwards dry Nurse to Mr *James Annesly*. He was my Lord and Lady's Son. I lived at Colonel *Dean*'s for some Time after King *George* the First came in, near about half a Year ; and then came to Lady *Allbam*'s at *Dunmain* in the Harvest. The Child when I was hired, was about three or four Month's old. The Lady *Allbam* put the Child into my Care, and Mrs *Heath* well knew the Child

was with me. The Child was put into my Care about a Year, or a Year and half after I came to my Lady's. I attended the Child before my Lord and Lady parted about half a Year, and attended him in the whole about a Year and a half, or two Years, The Child was with the wet Nurse before he was put into my Care. While the Child was at wet Nurse, he often was at *Dinmain* House, and was often dress'd by Mrs *Heath*. My Lady was very fond of the Child. Mrs *Heath* was very fond of the wet Nurse, and often sent her Jellies and other things. My Lady *Altbam* at the Time of parting with my Lord, was very fond of the Child, and desired of my Lord to have her Child with her.

### *Cross Examined.*

I lived at Colonel *Deane's* about six Months after the Queen's Death, and went a while after to see my Friends, and after went to my Lord's to live. My Lady before that Time sent for a Character of me to Mrs *Sinnot*. I cannot remember whether Lady *Altbam* was at Home in *August* or *September*; she was away sometime, but not so long as two or three Months. My Lady went often to the Nurse's in her Coach to see the Child. I lived at *Check-point* when I left this Service. My Lady was always very fond of the Child, and Mrs *Heath* had him often in her Arms, and was fond of him, and used to dress him. Mrs *Heath* was at *Danmain* at the Time of the Separation,

paration, and the Child was then there, and at parting my Lady desired very hard of my Lord to have the Child. Mr *Taylor* came up Stairs to my Lady, and she asked him if he had any Hand in the Contrivance against her, and he said he had not ; and she said she did not care if she could get her Child along with her. My Lady *Altbam* hired me. I knew Mr *Bolton*, and believe him to be an honest Man.

I know *Walker*, and he and his whole Family bear a bad Charaeter. I know *William Elms*. I saw the Child when Lady *Altbam* was leaving *Dunmain*, and saw my Lady kiss the Child, it was towards the Afternoon, it was on *Sunday*.

I knew Mr *Palister*, and he knew the Child to be Lord and Lady *Altbam*'s. I knew Mrs *Giffard* to be often at Lady *Altbam*'s, but can't say whether my Lady visited her often or not.

Mrs *Heath* was in the Carriage with my Lady when she was parting from my Lord. I can't say whether it was a four wheel'd Chaise or a Coach, or whether it was open at Top or not. Mr *Palister* had been some time in the House. The House where the Child was nursed was Stone and Mud.

*Weedon* was my Lord's Coachman, but his Wife did not then live in my Lord's House, but sold a little Drink below at the Bridge privately.

I never told Mr *Bolton* any thing about my Lady *Altbam*'s not having a Child.

*The Court being uneasy, asked Mr Sollicitor General whether he closed his Examinations then.*

*Mr Sollicit.* We have many more Witnesses to be examined ; nevertheless we will rest the Evidence for the Crown here, and hope we shall be at Liberty to have a Reply of Evidence, when the Evidence for the Traverser is over.

*Court.* You shall have a Reply of Evidence to any new Points that may happen to come out upon the Evidence for the Traverser, but not as to any Points that you have already proceeded upon.

*Mr Recorder for the Traverser states the Case.*

There are five Assignments of the Perjury set forth in the Indictment, which end in two Points : The first is, whether my Lady was with Child ; and the second is, whether she was delivered of a Child at *Dunmain* or not. My Lady *Altbam* never came into *Ireland* 'till the Month of *October 1713*, that is a Fact which appears by all the Evidence, and is admitted on all Hands. My Lady *Altbam* staid at *Briscoe's* in *Bride-street* 'till *December*, when my Lord came there, and they went together to *Dunmain*, and never went to *Vice's*.

While they were at *Briscoe's*, my Lady *Altbam* hired all her Servants there, and among the rest Mrs *Settricht* ; and we shall give an Account by all the Servants that my Lady was not with Child at all, nor particularly in *September, November, December, 1714*. We will shew that Lady *Altbam* was at *Dun-*

main in November, 1714, when Dr *Jemma* says he visited her.

We will shew by a Cloud of Witnesses, that Lady *Altbam* was at *Wexford* Assizes on the eighteenth of *April* 1715, and that she went to *Dunmain* about the twenty second of the said Month of *April*, and that she came to *Dublin* in *May* following, and was at the Fire-works on the King's Birth-day, the twenty eighth of *May*; and that the Birth that has been attempted to be proved, was but a mere Fiction, and a made Story.

We will shew that Mr *Cliff*, Mr *Colclough*, and Mrs *Pigot*, were at other Places, and not near *Dunmain*, and were not Goffips. That Mrs *Pigot*, left the County of *Wexford* in *March* in the Year 1714, and went to the County of *Tipperary* to attend her Husband, who was very ill of a broken Leg, and continued there, and did not return to *Wexford* 'till the Year 1716, after the Separation.

We will shew that from the Time of the Eclipse to the Time of the alledged Birth, Mrs *Pigot* was all that time attending her Husband of a broken Leg in *Tipperary*.

We will shew that *Colclough* was not at *Dunmain*, nor in the Country, at the Time of the supposed Christenning, and that he was a Papist, and surely my Lord would not have or make choice of him as a Godfather for his only Son. And we will also shew there was then a Difference subsisting between my Lord and Mr *Colclough*; and we will shew that Mr *Cliff* was not in the County of *Wexford*

at

at the alledged Christening, but was in *Dublin*, and attending the Courts here, and being a Lawyer we will shew what Causes he was concerned in by Notes out of the Courts.

*1st Witness for the Traverser.* Letitia Vice.

*Sworn.* I remember Lady *Altbam's* being in the Kingdom ; the first time I saw her was at my Mother's House in *Essex-street*, but can't recollect the Time. I believe my Lady came from the Country then. I was very young then, and can't be certain.

I heard they were at Capt. *Briscoe's*, and they were at our House on the Death of Queen *Anne*, but can't say if they were there before or not. My Lord and Lady were there on the Birth-day of the late King *George*, which was on a *Saturday*, and I believe they came there from the Country. I believe there were Fire-works then, I heard so. By the Almanack the Birth-day I find was on a *Saturday*. Can't recollect the particular Time they came there, but believe they were there the 28th and 29th of *May*. I remember Lady *Altbam's* dining at my Mother's after they came from *England*. I can't say how long my Lord and Lady staid in Town at the Time of the Fire-works. I can't say it was the first Time they were there or not.

*Cross Examined.*

I am certain that my Lord and Lady *Altbam* were at my Mother's on the Death of the Queen. I do not know of any Fire-works

works to have been in *October*, the Coronation-Day, in the Year 1714. I cannot tell, nor say, Lord or Lady *Altbam* were not in *Dublin* in *October, November, December, 1714*; or whether the 12th Day they were in Town was in the Year 1714, or what other Year it was in. I am positive the Birth-day was on a *Saturday* in *May*, and that the Fire-works were then; and that the Restoration was the Day following; I can't say it was at any other time.

I know *Katherine Connor*; she lived at my Mother's when my Lord and Lady were there. I don't know but Dr *Jemmat* visited her there. I was in Town last Trial, but did not then recollect; or till I was asked particularly, if I remembered Lady *Altbam*'s being at any Fire-works, or about Twelfth-Day, which was not asked me till after the Trial was over. I never looked into an *Almanack*, to know the Birth-day, till after I was applied to, to give Evidence.

A Gentleman, Mr *Charles Annesly*, and my Lord *Anglesey*, asked me about it, and told me of the Fire-works; that Question was put to me before the Trial. I do not know but Mr *Colles*, Lord *Anglesey*'s Attorney, was the Person that put the Question to me. I can't recollect particularly, when that Question was put to me.

11d *Witness for the Traverser*, Mary Settright.

*Sworn.* I was acquainted with Lord and Lady *Altbam*, and knew them first about Four Days before I was hired, which was Four or Five Days before *Christmās*; they then lodged at Capt *Briscoe's*, in *Bride-street*.

I left Town about Four Days after I was hired, and then went to *Dunmain*, and got there the Day before *Christmās-Eve*. *Mary Waters* and *Elizabeth Doyle* were hired with me, and were Chamber-Maids; the Night before *Christmās-Eve*, my Lord and Lady came down to *Dunmain*. My Lord and Lady lodged at Capt. *Briscoe's* when I left Town, and was hired by them for Housekeeper. I lived with Lord and Lady *Altbam* a Year and a Half: I left them in the Month of *Februāry*. The great Eclipse was the Year after I left them.

I saw Mistress and Miss *Briscoe*, her Daughter, at *Dunmain*. My Lady did not, to my Knowledge, miscarry, or keep her Room, while they were there; nor did I know her to be sick.

I kept the Keys of the Sugars and Spices, and there were not any of them sent for, for any one that was sick, while Mrs *Briscoe* was there.

I saw my Lady every Day, to know her Commands. I do not know, or believe, my Lady was with Child. Mrs *Briscoe* and her Daughter staid at *Dunmain* sometime; but

but how long I know not: and they left it in Summer. It was the same Year I went down, that my Lord and Lady went to *Dublin*. It was in Summer; they returned to *Dunmain* soon after. *Ralph* was Butler.

By my Lord and Lady's Order, *I made a Collar of Brawn for Christmās*. *They came back a good while before Christmās*. I left Lord and Lady *Altham* in *February*, and saw them several times after; and was sent for to *Dunmain* by my Lady, to prepare a Dinner, the *Christmās* Two Years after I left them. Says, *Cæsar Colclough* was one of the Company on Twelfth-Day, at that Entertainment.

### *Cross Examined.*

I went to the Lord and Lady *Altham* to *Dunmain*, two Days before *Christmās*, and staid till the *February* before the great Eclipse. The Eclipse was in *April*, after I left my Lady. I can't be exact, when Capt. *Briscoe* came down to *Dunmain*; but, to the best of my Remembrance, Mrs and Miss *Briscoe* went down in a Fortnight after my Lord and Lady; and they staid there about Two Months.

I lay-in there, in *June* following, and Mrs and Miss *Briscoe* were there then; I was a Fortnight confined before I went abroad. I was brought to-bed at the Dairy-houſe, a Field diſtant from my Lady's. I can't say but my Lady might miscarry while I was lying-in; but never heard she miscarried. Lady *Altham* came to see me when I was

lying-in. *Mrs. Heath* kept the Keys while I was sick.

Lady *Altbam* came to Town in Summer, after I went down ; it was in *August*, and my Lady staid but Two Months in Town before she returned. I lived with Lady *Altbam* till *February* following, and she was then in *Dunmain* ; she went to *Dublin*, and returned in the Summer following. I have no Reason to remember, that my Lady returned in Two Months. I cannot be positive whether Lady *Altbam* was in *Dublin* the *November* or *December* before the *February* I left her ; or if she was in *Dunmain* in them Months. I know the Reverend *William Nisbet*, Minister of *St Katrin's* : he asked me, If Lady *Altbam* had a Child ? and I said to him, Not to my Remembrance. I never told him, That Mrs *Heath* must know that Lady *Altbam* had a Son ; nor, That if Mrs *Heath* swore Lady *Altbam* never had a Child, she was a damn'd Bitch. I don't remember to have seen or heard of Saucers with smutty Figures, at *Dunmain*.

The Counsel for the Crown hereupon observed, that *Mary Heath*, upon her Examination on the Trial in the Court of *Exchequer*, mentioned such Kind of Saucers ; and that my Lord broke them.

*III<sup>d</sup> Witness for the Traverser*, Tho. Bowrke.

*Sworn*. Proves a Copy of a Record from the Submoniter's-Office, by which it appears

pears, that the Assizes of *Wexford*, were on the 16th of *April 1715*, before Lord Chief-Justice *Forster* and Mr Justice *Coote*.

*Witness for the Traverser, Mr William Harvey.*

*Sworn.* I was at the Trial of Mr *Masterson* and Mr *Walsh*, at *Wexford* Assizes ; it was in *April* ; the Judge was Lord Chief-Justice *Forster*, my particular Friend and Patron. I saw my Lord *Altham* in the Court-house, and at Mrs *Swiney's* in *Wexford*. I believe he was in Black : I never saw him before or since. I saw my Lady *Altham* there : I was told it was my Lady *Altham*, but can't tell by whom I was told so. I never saw her before or after. Mrs *Giffard* was in Company with her : Mrs *Giffard* was my Relation. There was a Quarrel at the Assizes, and a Fellow was almost murdered there ; and I went to complain to a Justice of the Peace, where my Lord *Altham* lodged. It was at Mr *Swiney's* ; and also to complain to my Lord there, for some of his Servants were in the Quarrel.

*Cross Examined.*

The Lady I heard to be Lady *Altham*, might be with Child for what I knew. I can't say I saw her going into Court, but I saw her in Court. Mr *Masterson* and *Walsh* were both tried at that Assizes. I can't recollect, whether I saw *Caesar Colclough* or Colonel

*Loftus*

*Loftus* there. *Lawrence Esmond* was tried there. I never saw *Lady Altham* any-where else, either before or since: The Person I was told was *Lady Altham*, was on the Bench opposite to the Sheriffs Box. I did not say any thing to *Mrs Giffard*, when I saw her at the Assizes. The Reason I took notice of the Lady, called *Lady Altham*, was, that I heard *Mrs Giffard* censured for her Intimacy in that Family. I would not be acquainted with *Lord* nor *Lady Altham*, if I had lived near them.

*Vib Witness for the Traveller*, Edmond Bourke.

I knew *Lord* and *Lady Altham*, and lived with them about Six Years, as Postillion.

I came to Capt. *Briscoe's*, in *Bride-street*, and drove my *Lord* and *Lady* from thence to *Dunmain*. It was about *Christmas-Eve*. *Mary Heath* was then my *Lady's Maid*. I saw *Mrs* and *Miss Briscoe* at *Dunmain*. I was born near *Rathvilly-Bog*, and there was a great *Hurling* there, and *Lady Altham* was at it.

I was at *Easter Assizes 1715*, and drove my *Lady* and *Mrs Giffard* to that Assizes. I knew there was a *Quarrel* there. There were Gentlemen impeached for lifting Men for the *Pretender*. I, and several of my *Lord's Servants*, fell out with the Prosecutors, in order to prevent them prosecuting the Priest. The next Morning we were taken into Custody by one *Mr Harvey*, a *Clergyman*, and detained till

till Eight of Clock that Night. My Lord was there. At the time Lord and Lady were separated, I lived with *Aaron Lambert*. I set down Lady *Altbam* at Mr *Swiney*'s in *Wexford*, and never heard my Lady was with Child, or that she miscarried.

*Joan Landy* was big with Child when my Lady went to *Dunmain*, and I never saw any Child with her of my Lord's, nor with any one else. I saw a Child of *Joan Landy*'s with her Self. I lived with my Lady at *Ross*, and waited of her Two Years after she and my Lord separated ; and brought several Neighbours Children to my Lady when she was there, and she was very fond of them. This was after the Separation, when my Lady lived at Mrs *Wright*'s.

*Cross Examined.*

I came to live with my Lord and Lady *Altbam* in *December 1713*. I lived with my Lord and Lady Six Years. I left my Lord in *1715*, soon after *Wexford* Assizes about a Fortnight or Three Weeks. Said, He could not tell if he came back to my Lord's Service after he left it. My Lord and Lady came together about *November 1713*, and I came to live with my Lady when she was at *Ross*. I was not in the House at the Time of their Separation, and I did not, to my Knowledge, return to live with my Lord after the Separation.

I can't tell when I came to live with my Lady. I can't tell whether I ever lived with  
my

my Lord again at Dunmain, after I was turned away after Wexford Assizes. I believe my Lord owed me Two Years Wages.

*Being asked if he knew Mr Arther Bush, if he had any Discourse with him about Lady Altham's having a Son; and if he did not say he should be made a Man if he swore for Lord Anglesey?*

Said, he never had any Discourse with him about my Lady's having a Child, nor never told him or any other that she had a Child.

Mr Mackercher offered me 300*l.* if I turned to him.

*Q. When did he make you this Offer?*

*Witness.* About three Years ago.

*Q. Where did he offer it you, and who was present?*

*Witness.* At New Ross.

*Q. What House?*

*Witness.* It was Paul Keating offered it to me, I kept off till I was forced to give Evidence.

*Q. Did not you come to Mr Snow's two Years ago to offer yourself as a Witness for Mr Anneley?*

*Witness.* I was in Snow's Room with Mr Mackercher this time two Years.

*Q. What brought you there?*

*Witness.* Mr Snow was Attorney against me for Mr Bishop. Mr Mackercher with Mr Snow, asked me if I knew James Anneley, and I told him I would not appear for any body 'till forced. Mackercher endeavoured

prevail on me to swear for young *Annesly*, but I refused, tho' I was promised 300*l.* for to join with *James Annesly*, if I would give my Testimony.

VIib. *Witness for the Traverser.* Sarah Swiney.

*Sworn.* I live at *Wexford*, and lived there above 30 Years. I knew Mr *John Master-son* and Mr *Walsh*, they were tried in Spring Assizes 1715.

My Lord and Lady *Altam* then lodged with me just at the Assizes, and they staid three, four, or five Nights. My Sister Mrs *Gif-fard*, Mrs *Roe*, and Mrs *Heath* came with my Lady. Mrs *Heath* lodged with me.

In the Year 1714, I came to the House I now live in just before the Queen died, in July it was, and my Husband had just recovered out of a Fever the March before my Lady came there. I dined with my Lord and I al-  
dy and saw no sign of her being with Child.

### *Cross Examined*

I lived at *Kennys-ball* from the latter end of the Year 1713 to July 1714, and then left it. I took a Lease of my House in July, 1714, and repaired it before I went into the House about three Months. I knew *Nicholas Duffe*, he lived with me, but did not live with me in April 1715. I can't say but he was then in *Wexford*. I knew Capt *Maxwell* and his Lady, and was intimate with them.

K

I can't

I can't say if they were then in *Wexford*. I knew *David Connel*, he lived with me, when first I came to that House he behaved then well enough.

*Being asked if she did not last Winter (before she knew what her Sister had Swore) declare to several People that she could not recollect what Year or what Assizes Lady Altham was at her House.*

I can't tell whether I ever told any body I was not certain when my Lady *Altham* lodged with me. I did not, 'till I considered of it, recollect the time. I never saw Lady *Altham* before or since. Lady *Altham* never lodged with me but once, and that was not in the water drinking Season.

VIIib. *Witness for the Traverser.* Ann Giffard, Sister to Sarah Swiney.

*Sworn.* I am the Widow of *Ravenscroft Giffard*. I know *Dunmain*. I lived at *Ballysop* about two Miles distant from *Dunmain*, and went to *Ballysop* about forty Years ago, and lived there since, except for about seven Years while I lived at *Ross*, and when I lived there, Lord and Lady *Altham* were at *Dunmain* and *Dublin* both. The first time my Lady came to *Dunmain* was about three or four Days before *Christmas* in the Year 1713, coming 1714. I never knew or heard that my Lady *Altham* was with Child. I travelled with Lady *Altham* from *Dunmain* to *Wexford* Assizes in *Spring* 1715, at the time that Mr *Masterson*

*Masterson* and Mr *Walb* were to be tried at the Sessions House. I and my Lady went in the Chariot and four and were at that time at the Sessions-House ; and I and my Lady continued together four or five Days at *Wexford*, and lodged at my Sister *Swiney*'s, and Mrs *Heath* went with us at that time to *Wexford*, and my Sister *Mary Roe* otherwise *Crompton*. They went to *Dunmain* from *Wexford*, and the *Friday* after they came home the great Eclipse was, and that Day I went to a Burial.

I never heard my Lady *Altbam* say she was with Child, nor did I ever know her to be with Child. I visited at *Dunmain* once, and sometimes twice a Week. Lord *Altbam*'s Family went frequently to the Parish Church, where I went. I was often in my Lady's Room when dressing and undressing, and never saw her look big, so as to seem with Child, nor did she seem to be with Child when she was at *Wexford* with me at the Assizes.

I knew *Ann Bennet*. I heard that a Servant named *Ann* was married to one *Bennet*, but I never declared to her or any one that my Lady was with Child, or had a Child. I cou'd not tell her so.

#### *Cross Examined.*

My Sister *Roe* and Mrs *Heath* rode single when they went to the Assizes at *Wexford*. When I was examined in the Exchequer I gave an Account of all the Persons, that went with me

to *Wexford Assizes*, that I cou'd remember, but did not then remember my Sister. I did not say then that Mrs *Roe* went with me, I forgot it. I was then in Mourning, but not for my Brother. I cannot recollect whether I said when I was examined in the Exchequer it was before or after the Queen's Death we went to *Wexford Assizes*. I went there for my pleasure, and never was at any Assizes before.

Mrs *Swiney* is my Sister, she was then also in Mourning but I can't tell for whom. I cannot remember any thing of the Trial of Mr *Walb* and Mr *Masterson*, but I saw the Gentlemen in the Dock. *Cæsar Colcough* sat by my Lady, and handed her in and out of Court. I knew *Burke*, he was the Postillion that drove me and my Lady to *Wexford*. I knew *Wheedon* my Lord's Coachman. Lord and Lady *Altbam* after the Assizes went to *Dublin*. I can't remember whether I ever declared I cou'd not be positive, but the Assizes I was at was in the Year 1716 in Summer.

VIII<sup>th</sup> Witness for the *Traverser*. Sarah *Wheedon*.

Sworn. I know *Dunmain* and was there, but cannot tell in what Year I was there. I knew Lord and Lady *Altbam*. I was at *Dunmain* when my Lady first came down there, and I continued there near three Years after. I saw Mrs *Briscoe* and her Daughter there, they came there before I left the House. Being asked if she knew of any Saucers with

undecent Figures at *Dunmain*? Swore by her Soul she never knew of any Saucers with indecent Figures there, nor any Accident happening to my Lady there. Lady *Altbam* ailed nothing while I lived there. I know of no China being broke there at that time. Mrs *Hester* was delivered of a dead Child while I was there, but it was before my Lady came down. One of the Fellows about the House was sent for Mrs *Sheilds* the Mid-wife for her, but I delivered her.

Lady *Altbam* was not with Child at any time when I was there. Mrs *Settright* was delivered of a Child while I was there. Lady *Altbam* had not a Child while I was there. Juggy *Landy* was delivered of a Child there, while I was there, and I saw it at *Dunmain* after my Lord and Lady seperated, and I saw the same Child at *Carrickduff*. Being asked if ever she saw a Child of my Lady's, she answered, upon my Soul, I never saw any Child at *Dunmain* that was called my Lady's Child. Being asked where she lived, said she was a Servant to Mr *Blakeney* in the County of *Galway*. Being asked if any unfair Attempts had been made upon her in relation to her being a Witness, said she was serv'd with a Subpæna by one from Mr *Mackerber*, one Morning to appear in this Court the Day following, and it was about threescore Miles off.

*Cross Examined.*

I was House-keeper till after my Lady came down to *Dunmain*, and then Mrs *Settright*

*right* was House-keeper. I can't tell how soon I left the House after my Lady *Altham* came down, but believe it was about three Months. I did not keep an Ale-House at the Bridge before Mrs *Briscoe* and her Daughter left *Dunmain*. Being asked if she was in the House when Mrs *Settrigby* was brought to Bed ; said she was not sure. Being asked if she was told by any one, of Lady *Altham*'s having a Son, or of a Birth-Day being kept : said on her Soul she never told any one of the Solemnizing of the Birth-Day of Lady *Altham*'s Child.

*Lord Chief Justice.* Mr *Mackerel* it seems was mistaken in his Affidavit when he said *Sarah Wheedon* was a material Witness.

*Council for the Crown.* That Gentleman never said positively she was a material Witness, but that he believed her to be so : and he was well authorised to say that, by her own Sons, who have swore to her former Declarations : How she has been since made to change her note, is not difficult to guess, considering the Management and Pains taken with her lately.

*IXth Witness for the Traverser.* Eleanor Thomas, alias *Fisher*.

*Sworn.* I knew Lady *Altham* and Mary *Walker*, and went to live with Lady *Altham* as House Maid, and staid with her for twelve Months. I was at *Dunmain* when Mrs and Miss *Briscoe* were there, and staid there till they left it. I never knew my Lady to mis-  
carry,

carry. I lived eight Years with Mrs *Pigot*, and when I left *Dunmain* I went to live with Mr *Bunbury*, and lived with him about a Year and then went to Mrs *Pigot's*, and was a Year, in Mrs *Pigot's* Service, a Year while she was in *Dublin*, and I was hired for her by one *Byrne*. I never heard Lady *Altbam* was with Child at *Dunmain* or else where.

*Cross Examined.*

I can't tell the Year I came to *Dunmain*, or the Year I left it. Lady *Altbam* herself hired me at *Dunmain*. I never saw a Child there. I never saw any bawdy Saucers at *Danmain*. I lived there a Year, and was there when Mrs and Miss *Briscoe* were there. There could not be a Miscarriage in the House, without my Knowledge, and I never heard of any, or that my Lady ever did miscarry.

*XIIb Witness for the Traverser.* John Tench.

I knew Mrs *Pigot*, my Father received her Rents for above thirty Years, and did so in the Year 1715. I cannot tell where she was in November in the Year 1715. I have my Fathers Accompts in the Year 1715.

*Council for the Crown.* The Gentlemen of the other side should follow their own Rules, no Accompts or loose Papers can be read as Evidence.

*Witness.* I cannot tell where Mrs *Pigot* was in the Years 1714 or 1715.

XIIth. *Witness for the Traverser.* James Walsh.

*Sworn.* I am married and my Wife lived with Mrs *Pigot* when I married her. I knew Mr and Mrs *Pigot*, and she came to *Dublin* in *November* or *December* 1714, and Mr *Pigot* went to *England* in *January* following. I believe Mr *Pigot* broke his Leg as I heard about *April* 1715, but did not see him then. Mrs *Pigot* went to Mr *Pigot* in *April* 1715, and staid till she brought him home. I can't say it was a Month she staid, but I believe it was. I am positive Mrs *Pigot* staid in *Dublin* in 1715, for she was not in *Wexford* in that Year and I believe she staid with him till his Death in 1717. I lived with her to the Death of Counsellor *Pigot*, and from that time till her own Death.

*Cross Examined.*

Being asked where he was at the Times undermentioned ? Said, I was in *Dublin* in *Christmas* 1714, and in *March* 1714, and was then in a Lodging of my own, and on *May-Day* 1715. Being asked where Mrs *Pigot* was in *March* 1714-15, and the first of *May* 1715 ? Said, I believe Mrs *Pigot* was in *Dublin* in *March* 1714-15. I can't say where Mrs *Pigot* was the first of *May* 1715.

I am not sure where Counsellor *Pigot* was at the time of the great Eclipse, I believe he was in the County of *Tipperary*. I was in *Dublin* at the time of the great Eclipse. Mrs *Pigot* was not then in *Wexford*, I did not see her with her Husband, but am sure she was with

with him in *Tipperary*. My reason for rememb'ring is, because I saw Letters from Mrs *Pigot* to her Agent. When she came to *Dublin* with Counsellor *Pigot* he had a broken Leg.

XII<sup>th</sup> Witness for the *Traverser*. Mary *Walsh*:

*Sworn.* I am married to *James Walsh*. I knew Mrs *Pigot* in *March* or *April* 1715, and she was then in *Dublin*. She went to Mr *Pigot* in *Tipperary* where he broke his Thigh; he sent for her, and believe she came with him from the Country. I cannot tell who came to Town with Mr and Mrs *Pigot*. I left *Tynern* in *November* or *December* 1714.

XIII<sup>th</sup> Witness for the *Traverser*. John *Cliffe*:

*Sworn.* My Father is dead, and he was a Lawyer. I can't take upon me to say of my own Knowledge where my Father was in *May* or *June*, 1715. I believe I was then at College in *Dublin*, and can't take upon me to say where my Father then was.

*Notes taken in the Exchequer upon Motions, in which Mr Cliffe's Name appears, were offered as Evidence that Counsellor Cliffe was in Dublin.*

*Mr Serjeant Marshal for the Crown.* Objects to reading the Notes, and cites an Authority from the Case of *Reynolds and Sandys*, in the Court of *Exchequer*, where the Name of a Lawyer to a Bill was not admitted as Evidence; and that it was determin'd a Bill in *Chancery* in itself is not Evidence, unless the Proceedings thereon be proved; because a

Man may file a Bill in the Name of another without his Leave.

*Mr Daly for the Traverser.* I cannot conceive why a Rule-book of a Court should not be allowed to be Evidence in this Case. If an Attorney puts his Name to a Rule, he is accountable for it.

*Mr Bradstreet for the Traverser.* The Register dare not put a Lawyer's Name to a Rule unless he moved that Rule.

*Mr Tisdall,* Objects to such Evidence being offered: 'tis a Sort of Evidence that can't be admitted. The Officer of the Court is not sworn not to take down one Person's Name instead of another; and as he is under no Penalty for so doing, therefore he cannot incur any Forfeiture. And it is known in the Courts every Day, that one Gentleman makes Motions, and hands up Rules in the Name of another; this we see done every Day, and nothing is more common.

*Lord Chief Justice.* It is well known that the Office of Chief Remembrancer is a Place of high Trust and Profit; and if it should appear that he should take upon him to insert any false Rules, or be guilty of such a Fraud, he would subject himself thereby to a very severe Penalty, and incur the Forfeiture of his Office. Gentlemen, are not the Journals of the House of Lords and Commons produced as to a Point of Time to contradict Witnesses? Therefore I am of Opinion that these Rules may be read.

*Council for the Crown.* My Lord, with all Submission, there is a wide Difference between inserting a false Rule, and inserting a Rule in the Name of an absent Lawyer, when the Motion has been made by one of his own Brethren in his Name. Daily Experience shews us that it is often done ; and therefore Mr *Cliffe's* Name appearing on the Rule-book, at that or any other time, concludes nothing, induces no Certainty, nor can be any manner of Evidence of his being then in *Dublin* ; otherwise by this Sort of Evidence a Man might be proved to have been in *Dublin*, when in Fact and Reality he was at *Paris*, at *London*, or any of the remotest Corners of this Kingdom. Nor can we bring ourselves to think my Lord that the Rule-book in this respect is to be put in Competition with the Journals of the House of Peers or Commons, or that it has any Analogy to them. If the Point to be proved, was, that on such Days Motions were made in Mr *Cliffe's* Name, these Rules might be some sort of Proof of that, but can be no sort of Proof of his having been then in *Dublin*, which is the Point in question, for the Reasons abovementiored.

*Court.* The Rules must be read, and are very good Evidence to contradict what the Witnesses have swore.

*Thomas Burgh, Sworn* to prove the Rules taken out of the Rule Book of the chief Remembrancer's Office out of the Court of Exchequer to be true Copies.

*Rule of the 5th (May 1715.)* wherein Mr *Cliff's* Name is mentioned on the Motion.

*Rules of the 6th, 7th, 11th, 12th, 13th, (May 1715.)* Wherein Mr *Cliff's* Name is mentioned on these respective Days on the Motions.

*Rules of the 1st, 18th, 23d, 25th, (June 1715.)* Wherein Mr *Cliff's* Name is also mentioned on Motions in those respective Days.

*Mr Marshall.* There may be two or more Gentlemen of the Name of *Cliff* Lawyers.

*Council for the Traverser.* It is pretty well known there has not been any Gentleman of the Name of *Cliff* heard of here; to have been a Lawyer but Serjeant *Cliff*.

*Mr Marshall.* I observe, my Lord, that no Term is mentioned to these Rules, and that there is a Chasm of about eighteen Days in some of them, and Mr *Cliff* may very well have been in that Interval of Time in the Vacation between *Easter* and *Trinity* Term in the County of *Wexford*, which is but 60 Miles or two easie Days Journey from *Dublin*: Therefore those Rules (suppose Mr *Cliff* had been present when they were made which is by no means certain) conclude as strongly at least and much stronger against the Traverser, as for her.

*Lord Chief Justice.* Some of your Witnesses say that the Christening was a fortnight or three Weeks after the Birth, and others say four or five Weeks, should not therefore this Point be carried against you.

*Council for the Crown.* We think not my Lord, for none of our Witnesses have yet taken

taken upon them to say with certainty in what Month, much less in what Day the Child was born or baptiz'd, they speak only to the best of their Remembrance of a Matter that happen'd thirty Years ago.

*Mr Cliff said further.* I knew no other of that Name that was at the Bar but my Father. I knew *Anthony Colclough* and he was a reputed Papist.

XIVth. *Witness.* Penelope Halpenn.

*Sworn.* I am Daughter of *John Hunt* of *Glaugole* in the County of *Tipperary*. I knew Counsellor *Pigot*. He broke his Thigh in that Country, and lay at my Father's till he was well. Mrs *Pigot* came to him there in a few Days after, with Mrs *Wallace* and was there at the time of the great Eclipse. Mr *Pigot* kept his Bed and lay at my Father's for about a Month. Mr *Colclough* visited Mr *Pigot* there during that time, and they both went away together to the best of my Memory.

*Cross Examined.*

Mrs *Pigot* was there at the Eclipse, but I can't say for what time after, she was there.

XVth. *Witness for the Traverser.* William Sutton.

*Sworn.* I knew *Denis Redmond's* first in the Year 1717, he then lived in the House with me,

me, with my Mother. I sent *Redmonds* in February 1717 to *Ross* for a Midwife for my Sister, and he went away in the Morning, but did not return till Night. *Redmonds* named a Gentlewoman Mrs *Sheilds* that he said he brought, and that he had brought to one at Lady *Altbam's* before. *Redmonds* is not to be credited as I think, for I wou'd take very little Notice of his Oath now.

*Cross Examined.*

I never knew *Redmonds* perjured.

XVI<sup>th</sup>. *Witness for the Traverser.* Nicholas Croak.

*Sworn.* I knew my Lord *Altbam* in the Year 1711. I knew my Lady in 1713, the first time she came to *Dunmain*. I lived then at *Ballycarrickmore*, about two Miles distant from *Dunmain*, that was the first time Lady *Altbam* came to *Dunmain*, it was in December 1713. I know *Rotbunny Bog*, there was a Hurling Match made there by my Lord *Altbam* and Mr *Sutton* in the latter end of September 1714. I saw my Lady there the Day of the Hurling in her Chariot.

I was at *Wexford* in the Year 1715 at the Assizes, and Lord and Lady *Altbam* were there at that time, and I was very often at that time at *Dunmain*. I can't say I was often there, between the time of the Hurling, and the Assizes. I never observed my Lady to be

be with Child in *April 1715*, the Day of the Eclipse, my Father was then buried.

The 23d of *April* which was *St George's Day*, my Lord made merry and did so in the Year before on that Day, with Dancing and Merriment, and Lady *Altham* was then present and did not seem to be with Child. Being desired to point out the times and places he saw Lord and Lady *Altham*, said I saw my Lord and Lady in *April 1715* at *Wexford*, and in *August 1715* I saw them at *Dublin*. I saw them in *Dublin* in *October* and in *February 1715*, and in *Dublin* in *August 1716*. On the 28th of *April 1716*, I came to *Dublin*. I saw my Lady every time I came to Town at her Lodgings at Mrs *Vice's*.

*Cross Examined.*

I can't tell how often I saw my Lord and Lady *Altham* at *Dunmain*.

*Q.* How can you tell my Lady *Altham* was not with Child there.

*A.* I should have heard if my Lady was with Child. She might miscarry unknown to me. I was not at any other Assizes but those I mentioned before. I cannot tell if Mr *Colclough* was there then. I did not take much notice of him.

*Q.* How came you to take more notice of Lord and Lady *Altham* than of Mr *Colclough*.

*A.* Because I was better acquainted with Lord and Lady *Altham* then I was with Mr *Colclough*.

*Q.*

*Q.* Can you tell what coloured Clothes my Lord had on.

*A.* I cannot tell.

*Q.* Where did you see Lady *Altbam*.

*A.* At Mrs *Swiney*'s. I was in *Wexford* then, before my Lord and Lady came to Mr *Swiney*'s and did not hear of my Father's Death, till I came home. My Father died on *Wednesday* and was buried on *Friday* following. I staid two Days at the Assizes, and was at my Father's Burial the 23d of *April*.

*Q.* Did not you say that you was that Day at the Merry-making at *Dunmain*, being *St George's-Day*.

*A.* I was, after the burying.

Mr *Solicitor General for the Crown* prays a Reply, says he will not produce many Witnesses.

*Court.* We have had a most tedious Tryal of it, and there have been a great number of Witnesses already produced on both Sides, and we wont suffer any to be examined to Points already examined to.

*If. Witness for the Crown on the Reply.* John *Masterfon, Esq*;

*Sworn:* I was at the Assizes of *Wexford* in *Spring 1715*, and was arraigned there. There were some Women there, but no Lady was there that I knew or heard of. I knew Lady *Altbam* and did not see her, or Mrs *Giffard* there at that time. Lady *Altbam* was not in Court, nor did I hear she was in Town.

*law*

saw Lady *Altbam* at another Assizes, and I believe it was after 1715, and Mrs *Giffard* was with her.

I was arraigned, tried and honourably acquitted at that Assizes in *Wexford* in *April 1715*. Mr *Walsh* was tried first at those Assizes, but not the Day that I was tried, and I was in the Court when Mr *Walsh* was tried. I was in Court *Monday, Tuesday, and Wednesday*. The Court broke up the next Day.

III. *Witness for the Crown upon the Reply.*

Cæsar Colclough, Esq;

*Sworn.* I was at *Wexford* Assizes in *Spring 1715*. Neither my Lady *Altbam* nor Mrs *Giffard* were there then. I did not sit by my Lady *Altbam*, nor hand her into Court, nor out of Court during these Assizes. I knew Counsellor *Pigot*, he was in *Spring 1715* in *Dublin*, and he broke his Leg in *Tipperary*, and that was in the Year 1716.

I knew *Denis Redmonds* he is a Man to be Credited upon his Oath, he is as good a Man as any of his Ability, as I believe; I have known him these 20 Years.

Q. Will you take it upon you to say, Lady *Altbam* was not at *Wexford* Assizes in *April 1715*.

A. I am positive she was not in Court, for if she had, I should have taken Notice of her. It was in the Year 1716 that Mr *Pigot* broke his Leg. I do not believe any of the Person examined knew so well as I, when Mr *Pigo*

broke his Leg. I verily believe he broke his Leg in the Year 1716, and not in the Year 1715, but am sure it was not in the Spring.

*James Walsh* nor his Wife did not live with Mr *Pigot* at the time that he broke his Leg. I had it from his own Mouth, he was Door-keeper at the Play-House, and believe I can prove it if there is occasion. I heard Lord *Altham* was at the Assizes, but did not hear of Lady *Altham's* being there that Assizes. I was Hunting the moment of the great Eclipse on the Mountain of *Forth* at the time of the total Darknes.

*Third Witness for the Crown on the Reply.*  
Arthur Bush, Esq;

*Sworn.* I knew *Edmond Bourk*, but never knew him to be a Postillion to Lord *Altham*. He told me he was Servant to my Lord some time ago: *Bourk* came to my House about some Business as a Justice of Peace, and he happened to talk of his making an Affidavit for Lord *Anglesey* concerning a Pretender. I had some discourse with him about it, and asked him, if he had given his Testimony, and he told me he had for my Lord *Anglesey*. He told me he swore that he struck *Joan Landy* with a Hare's Skin when she was with Child, and that after she was delivered the Child had the Mark of the Hare's Skin upon it; that she was with Child by my Lord, and he said to her that he wou'd mark the Child. I know *Bourk* these 26 Years to have been always

ways a Fellow of a bad Character, and should not believe him upon his Oath.

*Cross Examined.*

*Bourk* said that he had swore my Lady had not a Child; I asked him with a sneer, how he who was so cunning a Fellow, wou'd pin himself down by an Affidavit? Oh, says he, if my Lord, does not come down to me, and pay me well, I can bring my self off, and contradict all I swore, for I can say that I had that Day heard my Child was drowned, and that I was in such confusion and grief, I did not know what I swore.

*IVth. Witness for the Crown on the Reply.*

The Reverend Mr *Albert Nisbet* called to contradict *Mary Settrigbt*, but was not received.

*Mr Justice Blenerhassett gives his Charge to the Jury.*

*Gentlemen of the Jury,*

Mrs *Mary Heath* stands Indicted for Perjury. This Perjury, is layed in the Indictment, to be committed by her, on a Tryal in Ejectment in the Court of Exchequer, wherein the Lessee of *James Annefley* was Plaintiff; to which Ejectment, *Richard Earl of Anglesey* took Defence; and the Merits of the Controversy in that Question, was whether the late Lord *Altam* had a Son by his Lady.

The

The Points of Perjury charg'd in the Indictment, were five.

*First*, that *Mary* the late Lord *Altbam*'s Wife never had a Child while the Traverser (*Mary Heath*) lived with the late Lady *Altbam*.

*Secondly*, That Lady *Altbam* never had a Child at *Dunmain*.

*Thirdly*, That there never was a Child, christened or living at *Dunmain*, of Lord and Lady *Altbam*'s, while the Traverser was there.

*Fourthly*, That the Traverser never saw a Child in the Hands or Care of *Joan Laffan*, while the said *Laffan* was at *Dunmain*.

*Fifthly*, That Lady *Altbam* never miscarried, of a Child in *Dunmain*.

The Indictment averr'd that the Facts were contrary to what the Traverser swore, and that therefore, she perjured herself.

Several Witnesses have been produced on both sides, and before the Council for the Crown had entered into their Examinations the Verdict in the Court of Exchequer was admitted, and the Examinations of Mr *Goustry* were likewise admitted, and it was also admitted, that the Traverser lived with Lady *Altbam* to the time of her Death.

The first Witness examined by the Prosecutor was Mrs *Henrietta Cole*, whose Testimony related to the Miscarriage of Lady *Altbam*.

She swears that Lady *Altbam* came over in 1713. That Lord and Lady *Altbam* lived at *Dunmain*. That they, and Mrs *Cole*, and her

her Mother, were at Dinner at *Dunmain*. That there were Saucers of indecent Images brought to Table, which were broke by my Lord, whereby my Lady *Altbam* received a fright, and that Mrs *Heath* came and alarmed her Mother that Night, with the Indisposition of Lady *Altbam*; and that Mrs *Cole*, was in Bed with her Mother, when Mrs *Heath* desired her Mother to make haste, and rise for that Lady *Altbam* was extremely Ill. And the Witnes layed, she believed, that Lady *Altbam* miscarried, for that she saw the Abortion in Lady *Altbam*'s Closet; she first said, that the Abortion was shewed to her by her Mother, and did not remember any particular Conversation about a Miscarriage, with Lady *Altbam*; that Lady *Altbam* was confined to her Chamber a Fortnight, and that she mentioned this Affair to Mr *Monk*'s Family.

This is the substance of her direct Testimony. But she is not quite so consistent when cross Examined.

You observe, Gentlemen; that Mrs *Cole* says, that Lord and Lady *Altbam* went from her Father, to lodge at another Lodging, and that from thence they went to *Dunmain*; in this Point, the Witnesses for the Traverser, stand in contradiction to her, for they swear, that Lord and Lady *Altbam* went directly from Mrs *Cole*'s Father's House, to *Dunmain*. Mrs *Settright* who was hired to be the House-keeper is Particular in her Testimony herein, that Lord and Lady *Altbam* went from Mrs *Briscoe*'s, and not from *Vise*'s, to *Dunmain*.

Mrs

Mrs *Cole* said, that *Settrignt* was brought to Bed in *Dunmain*. *Settrignt*, and she agree in this part of the Evidence.

Mrs *Cole* said, she was examined in the Court of Exchequer, and there declared, that she and her Mother went down to *Dunmain*, from *Dublin*, in *March* or *April*, in the *Spring* immediately following Lady *Altham*'s coming over to this Kingdom. But now, she corrects herself and says, she then mistook the time, for that it was in *February*, she, and her Mother, went to *Dunmain*. She says, the accident of China-Saucers happened two Months after going to *Dunmain*, and that four Gentlemen and her Mother and she, dined with Lord and Lady *Altham* that Day, and were present at that Accident: She does not mention who they are, but conceals their Names. In her Testimony, she describes the Room. She tells you, Gentlemen, that Lord *Altham* emptied the Saucers very carefully from the Sweet-Meats, and threw them down, one, by one. She swears that Lord *Altham* knew his Lady was with Child. She says, that she believes that she swore, that she was about 13 Years Old, at the time of the former Tryal; but now she says she was born in the Year 1691, so that she must be then about 23 Years Old, and differs now 10 Years from the account she gave of her age on her former Examination. She tells you now, that one might observe the large Eyes, and Head of the Abortion; she admits to have said, on her former Tryal, that her Mother told her

her it was an Abortion, but now she says that her Mother and she went into the Closet together. She said on her former Tryal that Lady *Altbam* set next to her at Table, but now she says that Lord *Altbam*, sat next to her and excuses herself from these mistakes that they all arose from the Confusion she was in at the time of her Examination.

She now won't be positive that Lady *Altbam* went to *Vice's* before she went to *Dunmain*, but is positive she went to other Lodgings. Says she does not remember the House-Maid at *Dunmain*, nor *Bourke* the Postillion. She tells you, she paid a Visit to Mr *Beydes*; she was asked if she knew *Anthony Dwyer*, one of the Servants, she said she did not. She was asked if she was at *Dunmain St George's Day*, she said she believed she was. She was asked if she remembered any Smock-race to be at *Dunmain* that Day, she said she did not remember of any Smock-race. She denies she ever had any discourse with Mr *Mark White*, that she cou'd swear for Lord *Anglesey*, if her Lease was renew'd, she said she did not know of any Fire, or Candle, being in the Room when Mrs *Heath* came to alarm her Mother of Lady *Altbam*'s being Ill, but the manner of her knowing Mrs *Heath* was, by her Voice

The next Witness in behalf of the Prosecutor was Doctor *Jemmat*. He swore that he was Physician to Lord *Altbam* several Years. He swears, that Lord *Altbam* came to his Lodging to acquaint him of the Indisposition of

of his Lady, and that he went along with my Lord to see her, and found her very warm, and prescribed for her, but that afterwards he discovered by her all the Symtoms of Pregnancy, and that she told him she was gone three Months with Child. She said she was regular 'till about two Months past, and there-upon he ordered her mild Medicines, he fur-thur said he believed, that Lady *Altham* was with Child, and that her Complexion was altered, as pregnant Women are. He was asked on the cross Examination, whether there was any infallible Rule to know a real, from a false Conception. He said, the Colleges of Physicians of *Dublin*, or *London*, or the Royal Society in *London*, cou'd not as yet determine that Point.

*Hellen Moncrief*, was the next Evidence. She swore, that Doctor *Walker* recommended her as a Nurse to Lady *Altham*. That she met him, in *Stafford Street*, the beginning of *November* or *December* 1714. That she was three times, at my Lady's Lodgings, that she appeared as big with Child, as any Woman, that had been gone six or seven Months, that she laid her Hands on her Belly near her Petticoat, tho' she was not quite so Critical as the Doctor was in his Profession; yet, she seemed to know more of Lady *Altham*'s Pregnancy, then the Physician knew. When she was cross Examined, she said, she did not observe any Child to move in her Belly.

*Mrs Bush*, was next Examined. She said she was acquainted with Lady *Altham*, and

and saw her at *New Ross* in *February 1714*, and that she seemed then, to be with Child ; and that she was in Mourning for Queen *Anne*. That she was introduced to her there, and in a Day or two paid her a Visit ; she says, that she saw her after the latter end of *June*, to the best of her Recollection, without her big Belly. There was nothing certain, in her Testimony, and nothing material arose from her cross Examination ; therefore, Gentlemen, I will not trouble you therewith.

*Alice Betts*, swore that she wished Lady *Altham* Joy, and in *November 1714*, and after, had some Conversation with Mrs *Heath* ; and that she used to Joak with her about Lady *Altham*'s being with Child. She said, that Lady *Altham* appeared with Child, and that it was easy to be seen that she was with Child, that it was before, or after *Christmas*.

*Mary Sutton*, swore that she dined at *Dunmain*, and Toasted the Boy in the Box.

As to *Evan Thomas*, and *Martha Tennant*, their Testimony was not very material. You have it, Gentlemen, in your Notes.

*Anstace Toole* said, she fitted a Gown on Lady *Altham*, and that Mrs *Heath* was present. That she saw the Child at *Ross*, and made a Gown for the Child, and said that she never had any Conversation with Lady *Altham* about the Child.

*Ann Bennett*, said she believed in her Heart, Lady *Altham* was with Child, and that Lady *Altham* looked very round.

*Edward Howlet* was the next Witness, who was Examined after *Bennett*. you have seen, Gentlemen, the mean Figure and Appearance he made. He swore he sold Clouts to Mrs *Heath*, for Lady *Altham*'s lying-in. That on the Day of separation, of Lord and Lady *Altham*, her Ladyship kissed the Child in the Coach, at parting. He said that this happened about 10 or 11 o'Clock in the Morning. But here, Gentlemen, I must take Notice, that all the other Witnesses, say it was in the Afternoon, Lady *Altham* went from *Dunmain*, the Day of the separation; and herein contradict *Howlet*.

It is of no purpose, to mention his cross Examination, therefore I shall not repeat it to you.

*Newton Rickets*, said that he made a small Chair for a Child, but did not swear, that Lord and Lady *Altham* called him their Child, but that they behaved to him as such. I shall likewise, not trouble you with his cross Examination.

*Elizabeth Doyle* swore that her Mother fell ill of a Fever, which prevented her nursing the Child. On her Cross-Examination she said that Madam *Cole* desired her to go to *Dunmain* last Summer to give an Account of what she could say, and that she was not at *Dunmain* for twelve Years before.

*James*

*James Sinnot* swears that he saw Lord and Lady *Altbam* at his Father's House, and observed that Lady *Altbam* was with Child, and that the Child was afterwards at *Dunmain*, and that Lord *Altbam* had ordered the Child to be brought to Table to be shewn to the Witness and *Mr Ivory*, as his Son and Heir. This Piece of Evidence is somewhat extraordinary, that Lord *Altbam* should call his Son and Heir to be shewn to him, and that he never saw the Child but once.

*James Fitzpatrick* says that he saw a Child in the Arms of a clean orderly Woman, and that he took it to be Lord *Altbam*'s legitimate Child; and the only Reason he gave for it was, that he believed Lord *Altbam* had that Regard for him that he would not introduce his illegitimate Child to him, and that, to the best of his Memory, he saw the Child once before the Separation. But I must observe to you, Gentlemen, that no Witness of Figure has been produced to satisfy you that Lady *Altbam* miscarried, or was brought to Bed.

You have given great Attention, Gentlemen, to the Evidences of both Parties, and you have them on your Memory, therefore in regard it is so late, at this time I shall not trouble you farther with a Repetition of them. You will, Gentlemen, consider the Testimony of the Witnesses for, and against, and if you think those produced by the Prosecutor outweighed the Evidences on the part of the

Tra-

Traverser, you will in that Case find her guilty ; but if you should be of Opinion, that the Scale turns in favour of the Evidences for the Traverser, or that the Ballance is pretty equal, you will incline to Mercy. I am sorry you have been detained so long, and shall wait 'till you return your Verdict.

*Lord Chief Justice Marley.*

*Gentlemen of the Jury,*

My Brother has summed up the Evidences as far as he went very full and clear, and as it is so late, I shall only make very short Observtions on some of the Witnesses.

You have heard, Gentlemen, the Testimony of *Howlet* the Pedler, you have seen his Person, and will properly consider how he is to be creditted.

*Laffan* swears the Child was born in *April* or *May*, and christened in three or four Weeks after.

— *Jemmat*, the Doctor of Physick, said, he altered his Prescription for Lady *Altbam* when he had observed some Symptoms of Pregnancy ; but he declares that the College of Physicians in *London* and *Dublin* may be deceived in Point of Skill with respect to a real or false Conception.

Gentlemen, if the Evidence of *Eleanor Murphy* and *Mary Doyle* cannot be depended upon

upon, there are no positive Evidences for the Birth of a Child of Lady *Altbam*.

The Traverser produced several Witnesses to shew that Lady *Altbam* was at *Wexford* Assizes in April 1715. That Mr. *Antibony Colclough*, who is said to be one of the Godfathers was a Papist.

You have Testimony produced to you which cannot lie of Mr *Cliff*, (who was the other Godfather) being in *Dublin* at the Periods of Time mentioned in the Rule-Books out of the Chief Remembrancer's Office, and that Mrs *Pigot* the Godmother went to the County of *Tipperary*, where her Husband was ill with a broken Leg, and returned with him to *Dublin*; and this was offered as Evidence in behalf of the Traverser, to shew that Mrs *Pigot* was not in the County of *Wexford* at the christening of the Child, and to controul the Evidence of the Prosecutor in that Respect.

There were three Gentlemen of Credit produced on the Reply for the Crown; the first was Mr *Masterson*, and the next was Mr *Colclough*, who swear they did not see Lady *Altbam* at the Assizes of *Wexford* in Spring 1715; and Mr *Colclough* was farther examined to support the Testimony of *Redmonds*. Mr *Bush* was the third Evidence, he was examinded to discredit the Testimony of *Burke*, who was produced as a Witness in Behalf of the Traverser.

You

You will consider, Gentlemen, Evi  
 denc's on both Sides as to the Pr ~~bab~~  
 Improbability, and agreeable thereto for  
 or against the Traverser ; but  
 you in mind, that Things of this  
 Case of Perjury ought to be proved beyond  
 all Doubt, which I must own I do not think  
 done here.

*Then the Jury withdrew, and in about Twenty  
 Minutes brought in their Verdict that the  
 Traverser was Not Guilty.*

*Paging irregular matter* Comp  
 F I N I S.

Ex. f. 16.  
 2/29/07

